IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. ORIGINAL.

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - - *Complainant,*

vs.

THE STATE OF INDIANA, AND
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL, ALL CITIZENS OF THE
STATE OF INDIANA, - - - - - - *Defendants,*

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT.

The Commonwealth of Kentucky, by James W. Cammack, its Attorney General, respectfully states, that:

(1) James W. Cammack, Attorney General of the Commonwealth of Kentucky, duly authorized to pray leave to file the bill of complaint hereinafter mentioned,

presents this petition for leave to the Commonwealth of Kentucky to file its bill of complaint in this Honorable Court against the State of Indiana, and the following citizens of said State, namely: James Duane Duncan, Claude F. Johnson, Walter L. Brandt, Robert N. Losey, Frank D. Hatfield, Todd Stoops, John F. Carson, Robert E. Rogers and Lester McCool, a copy of which bill of complaint accompanies this motion.

(2) That said bill of complaint is in equity against the State of Indiana and the aforementioned citizens of Indiana, and thereby the Commonwealth of Kentucky seeks to invoke the original jurisdiction of this Honorable Court, for the purposes:

(a) Of enjoining the defendants from causing a breach and from breaching a contract entered into on the 12th day of September, 1928, by and between said States for the construction of an interstate bridge over the Ohio River, near Evansville, Indiana, at the common boundary line between the State of Indiana and the Commonwealth of Kentucky.

Said contract was entered into by and between said States pursuant to statutory authority under statutes of both States and under statutes of the United States. Said contract provides for immediate and continued performance thereof until said bridge shall have been constructed by said States acting in co-operation, as shown by the copy of said contract as embodied in the accompanying bill of complaint.

The State of Indiana, through its State Highway Commission, would be ready, able and willing to per-

form said contract, according to its terms but for the fact that the aforementioned citizens of Indiana have commenced an action against the members of said Highway Commission and other officers of said State in a Court of general civil jurisdiction in said State of Indiana, namely, in Room No. 2 of the Marion Superior Court in Marion County of said State, to enjoin said officers of the State of Indiana from performing said contract on the theory that said contract is unauthorized in law. Although summons in said case are not returnable until October 20, 1928, and although it is not known how the said Court or the Supreme Court of Indiana would decide said case, the State of Indiana will not perform said contract further until there is a final adjudication of said case by the Courts of last resort. The citizens of Indiana who instituted said case in said State Court will appeal from any adverse judgment that may be rendered against them in said State Court to the Supreme Court of Indiana, and the defendants in said case would do likewise. The period of such litigation would be not less than one year, and the State of Indiana would during all of such time desist from all performance of said contract on account of said litigation. That such delay of performance by the State of Indiana would in itself constitute a breach of said contract by the State of Indiana, and the prosecution of said litigation by the aforementioned citizens of Indiana will cause such breach by the State of Indiana.

(b) Of procuring a decree against the State of Indiana for the specific performance of its part of said contract. The part to be performed by the State of Indiana under said contract is susceptible of specific performance. Said State now has made the necessary appropriation of money to enable it to perform its part of said contract. Pursuant to the provisions of said contract the State of Indiana has employed, with the approval of the Commonwealth of Kentucky, consulting engineers who have contracted with said States to prepare the plans and specifications for said bridge and to supervise its construction throughout until completion.

Moreover, the State of Indiana will, if permitted by the Courts, perform said contract according to its terms and will perform said contract under a decree for specific performance, if such decree should be issued by this Honorable Court.

(3) The Commonwealth of Kentucky is ready, able and willing to perform its part of said contract, but cannot do so because of the failure of the State of Indiana to perform its part as aforesaid and for the reasons aforesaid.

(4) The Commonwealth of Kentucky is not a party to said action in said Marion Superior Court, and no judgment rendered in said case by any Court in the State of Indiana can or will be binding on the Commonwealth of Kentucky. Yet the purpose of said litigation is to enjoin performance of said contract by the State of Indiana, and the rights of the Commonwealth

of Kentucky arising out of said contract are vitally involved and affected by said litigation in said State Court. The Commonwealth of Kentucky is without any remedy in the premises unless leave is granted to file said bill of complaint in this Honorable Court, and it will sustain irreparable damages and loss unless it is permitted to file said bill of complaint and have its rights under said contract adjudicated by this Honorable Court.

(5) Said bridge to be constructed under the terms of said contract is a public and lawful bridge over said Ohio River and is authorized by acts of the Congress of the United States. The purpose of said bridge is to connect with each other important trunk highways in the State highway system of said respective States, which said trunk highways also form a part of the Federal Aid System of Highways and are designated as part of United States Route Number Forty-one (41). The prompt and unimpeded performance of said contract to construct said bridge is of great public interest to the general traveling public in the United States, to the said States and to the United States itself. Said highways are not now connected by any bridge over the Ohio River at the common boundary of said States and great public inconvenience results to all travelers of said United States Route Number Forty-one by reason of the absence of such bridge.

(6) The State of Indiana has no objection to the granting of leave to file said bill of complaint as is shown by the written statement to that effect executed

by the Attorney General of said State and approved by its Governor, which statement is attached hereto as Exhibit "A" and is made a part hereof.

Wherefore the Commonwealth of Kentucky prays that this Honorable Court will grant leave to it to file its said bill of complaint in this Honorable Court and to prosecute the same to a final judgment, and for all other relief as to the Court may seem proper in the premises.

COMMONWEALTH OF KENTUCKY,

By JAMES W. CAMMACK,
Attorney General of Kentucky,

M. B. HOLIFIELD,
Assistant Attorney General of Kentucky,

CLIFFORD E. SMITH,
Assistant Attorney General of Kentucky,
Solicitors for the Commonwealth of Kentucky.

Approved:

FLEM D. SAMPSON,
Governor of the Commonwealth of Kentucky.

UNITED STATES OF AMERICA
COMMONWEALTH OF KENTUCKY } ss.
COUNTY OF FRANKLIN

James W. Cammack, being first duly sworn on oath says that he is the duly elected, qualified and acting Attorney General of the Commonwealth of Kentucky; that he has read the foregoing motion for leave to file bill of complaint and knows the contents thereof, and that the same is true; that as such Attorney General he is duly authorized to present and file said motion and to pray leave to file the said bill of complaint.

JAMES W. CAMMACK.

Subscribed and sworn to before me by James W. Cammack this 11th day of October, 1928.

My commission expires 20 day of March, 1932.

JAMES WILLIAMS MOORE,
Notary Public in and for Franklin County, Kentucky.

EXHIBIT A.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

In the Matter of the Motion by the Commonwealth of Kentucky for Leave to File its Bill of Complaint in the Supreme Court of the United States against the State of Indiana and Certain of its Citizens.

Being informed of the intention by the Commonwealth of Kentucky to present a motion to the Supreme Court of the United States for leave to file its bill of complaint against the State of Indiana and certain citizens of Indiana for the purpose of protecting its rights arising from a contract entered into by said States for the construction of an interstate bridge over the Ohio River at the common boundary line of said States, the State of Indiana says it has no objection to said motion or to the granting of its prayer for the reason that there is no other Court of competent jurisdiction to adjudicate the rights of the Commonwealth of Kentucky which are involved in the litigation over said contract instituted by citizens of Indiana against the State of Indiana in one of the Courts of Indiana.

Respectfully submitted,

[SEAL] ARTHUR L. GILLIAM,
Attorney General of the State of Indiana.

Statement approved:

ED JACKSON,
Governor of the State of Indiana.

Dated at Indianapolis, Indiana, this 11th day of October, 1928.

FILE COPY

DEC 10 -928

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. [redacted] ORIGINAL

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - - Complainant,

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of Indiana, - - - - - - - - - Defendants.

BILL OF COMPLAINT.

COMMONWEALTH OF KENTUCKY,
By JAMES W. CAMMACK,
Attorney General of Kentucky,

M. B. HOLIFIELD,
Ass't Attorney General of Kentucky,

CLIFFORD E. SMITH,
Ass't Attorney General of Kentucky,

Solicitors for the Commonwealth of Kentucky.

WESTERFIELD-BONTE COMPANY, INCORPORATED, LOUISVILLE, KY.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. ORIGINAL.

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - - *Complainant,*

vs.

THE STATE OF INDIANA, AND
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL, ALL CITIZENS OF THE
STATE OF INDIANA, - - - - - - *Defendants.*

BILL OF COMPLAINT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Commonwealth of Kentucky, one of the United States of America, by its solicitors, James W. Cammack, Attorney General of said State, M. B. Holifield and Clifford E. Smith, Assistant Attorneys General of said State, brings this Bill of Complaint in two para-

graphs, against the State of Indiana, and the following citizens of the State of Indiana, namely: James Duane Duncan, Claude F. Johnson, Walter L. Brandt, Robert N. Losey, Frank D. Hatfield, Todd Stoops, John F. Carson, Robert E. Rogers and Lester R. McCool, and your orator complains and alleges:

PARAGRAPH No. 1.

For its first paragraph of complaint, complainant says:

1. The Commonwealth of Kentucky is one of the States of the United States of America, and this action is brought on its behalf pursuant to the written request made on the Attorney General of Kentucky by the Governor of Kentucky and by the State Highway Commission of Kentucky and pursuant to the authority of the Attorney General of Kentucky to appear for the Commonwealth of Kentucky in any action and tribunal in which the interests of the Commonwealth of Kentucky are involved, and institute any legal or equitable proceedings in the name of and on behalf of the Commonwealth of Kentucky.

2. The defendant, State of Indiana, is also one of the States of the United States of America, and the other of the above named defendants are all citizens of the State of Indiana.

3. This action is brought in the Supreme Court of the United States in the exercise of the original jurisdiction of said Court, on the ground that it is an action

in equity relating to a controversy between said two States of the United States and also between the Commonwealth of Kentucky as a State of the United States and citizens of the State of Indiana as another State of the United States.

4. The Commonwealth of Kentucky and the State of Indiana are adjoining States, and the north bank of the Ohio River forms the boundary line between the northern side of Kentucky and the southern end of Indiana, except that both States have concurrent jurisdiction to enforce their criminal laws for crimes committed on the waters of the Ohio River where it forms the boundary between said States.

5. At a point near the city of Evansville, east of said city, the low water bed of the Ohio River has meandered approximately one mile to the south of the point where it was located when its north bank was established as the boundary line between said States, but in times of high water the water of said river extends to the point where the north bank of said river marked the boundary line between said States, and such high water at times overflows onto Indiana soil north of the point where said stream has meandered as aforesaid.

6. Both of said States have administrative bodies known as State Highway Commissions, established by the respective Legislatures of said States, whose functions it is to lay out, establish, improve and maintain a system of State highways in said respective States. By statutes of both States assent has been given to the

provisions of the Act of Congress, approved July 11, 1916, entitled, "An Act to provide that the United States shall aid the States in the construction of rural post roads and for other purposes," also to the provisions of Acts of Congress amendatory thereof and supplemental thereto.

7. Both of said States have heretofore laid out and established State highway systems to which additional highways are from time to time added, and said highway systems are being improved and maintained in each of said States by their respective State Highway Commissions.

8. In each of said States there is a trunk highway in the respective highway systems of said States which extends from north to south through each of said States and forms a part of a Federal rural post road constructed under authority of said Act of Congress, approved July 11, 1916, and which rural post road as it extends through both of said States is designated and officially known as part of United States Route Number Forty-one (41). Said United States Route Number Forty-one (41) comprises a continuous string of highways extending through a number of States, including Kentucky and Indiana, from Naples in the State of Florida north to Copper Harbor in the State of Michigan. The several States through which said United States Route Number Forty-one (41) so extends are all entitled to Federal aid under said Act of Congress, approved July 11, 1916, for the improvement of such

highway within their respective boundaries as forms a part of said Route Number Forty-one (41).

9. The State of Indiana, by its State Highway Commission, has constructed in the State highway system of Indiana, an improved hard surface highway, as part of said United States Route Number Forty-one (41), and as a rural post road under said Act of Congress, approved July 11, 1916, from the Illinois-Indiana State line south of Chicago in a southern direction throughout the length of the State of Indiana to the city of Evansville at its Indiana-Kentucky State line, and the same has been laid out for improvement as part of said United States Route Number Forty-one (41) from the city of Evansville to the southern boundary line of Indiana east of and near Evansville, at the point where the Ohio River has meandered as described aforesaid in clause number five (5).

10. Likewise, the State of Kentucky has laid out and established in the State highway system of Kentucky a highway extending from a point near the northern boundary line of said Commonwealth, approximately due south of the southern terminus of said trunk highway in Indiana forming a part of said United States Route Number Forty-one (41), in a generally southeasterly direction through said Commonwealth to its southern boundary line, and which highway in Kentucky is also a part of said United States Route Number Forty-one (41), and is being improved as a rural post road under said Act of Congress, approved July 11, 1916.

11. Said United States Route Number Forty-one (41), as comprised by said two highways in said States of Kentucky and Indiana is now broken by the Ohio River and is not connected by any bridge at the boundary line between said States.

12. Said State highways in said States of Kentucky and Indiana, forming a part of said United States Route Number Forty-one (41), are intersected in each of said States by highways running east and west, several of which are also trunk highways in the State highway systems of said States and constitute rural post roads constructed under said Act of Congress, approved July 11, 1916, and are designated and officially known as United States Routes. From these intersecting highways many travelers enter upon United States Route Number Forty-one (41), for the purpose of traveling over it either from Kentucky to Indiana or from the latter State to the former.

13. Said United States Route Number Forty-one (41) is an important rural post road of the United States and is a heavily traveled route by large numbers of citizens of the several States and of the United States who desire to travel either north or south through the United States, and said United States Route Number Forty-one (41), as it extends through Kentucky and Indiana, is of particular importance to the traveling public of said States in that there is no other adequate route in the western portion of said States for travel between said States.

14. The only means by which travelers now using United States Route Number Forty-one (41) have to cross over the Ohio River is a ferry over said river which is being operated for private gain. The construction of a bridge over said river, for the purpose of connecting United States Route Number Forty-one (41), is a matter of great public utility and immediate necessity to citizens of Kentucky and Indiana, to the citizens of the United States, to the States of Kentucky and Indiana, and to the United States itself, which last named government has invested vast sums of its money in the improvement of United States Route Number Forty-one (41), in Indiana and Kentucky, as a rural post road and said bridge is necessary to complete said Route Number Forty-one (41) as a rural post road of the United States.

15. By an Act approved March 3, 1927, Congress especially authorized the State of Indiana to construct such bridge. Said Act is copied in full in Appendix, marked "Exhibit H" for identification, and is made a part hereof to the same extent as if copied in full herein.

16. The Commonwealth of Kentucky and the State of Indiana desiring to construct such bridge, by their respective State Highway Commissions with the approvals of the Governors and Attorneys General of said respective States, entered into a written contract on the 12th day of September, 1928, for the construction of such bridge, which contract is in words and figures as follows:

AGREEMENT.

"THIS AGREEMENT made and entered into by and between the Commonwealth of Kentucky, through and by the State Highway Commission of Kentucky, and the State of Indiana, through and by the Indiana State Highway Commission, witnesseth:

"THAT WHEREAS, by the provisions of an act of the General Assembly of Indiana creating the Indiana State Highway Commission (Acts 1919, p. 119), it is made the duty of said Commission to lay out a system of highways reaching each and every county seat of the State and each and every city or town of 5,000 inhabitants, and to connect such highways with improved trunk highways of adjoining States in such manner that the trunk highways of the adjoining States and the connecting highways of Indiana become continuous improved highways, and to do all other things necessary to carry out the co-operation contemplated and provided for by an Act of Congress of July 11, 1916, known as the Federal Aid Road Act, and

"WHEREAS, the State of Indiana, by its State Highway Commission, has constructed an improved, hard surfaced highway, as part of its Federal Aid Primary System from the Illinois-Indiana State line at a point where Indianapolis Boulevard in the City of Hammond, Indiana, connects with 106th Street in the City of Chicago, Illinois, in a southerly direction paralleling generally the state line through the cities of Hammond, Morocco, Kentland, Attica, Rockville, Terre Haute, Sullivan, Vincennes, Princeton and Evansville, and has

designated the southern terminus thereof at a point near Dade Park, Kentucky, and

"WHEREAS, said highway forms and is a part of the trunk line highway system of the State of Indiana and is also a part of the Federal Aid System of highways and is designated, known and marked as United States Route Number Forty-one (41), and

"WHEREAS, there is in the state highway system of the Commonwealth of Kentucky a highway extending in a generally southerly direction through said Commonwealth from a point near the northern boundary line of said Commonwealth and approximately due south of the southern terminus of said United States Highway Number Forty-one (41), in the State of Indiana, which said highway in the Commonwealth of Kentucky is also a part of the Federal Aid System of Highways and forms part of said United States Route Number Forty-one (41), and

"WHEREAS, said highway is intersected in Kentucky by other trunk line highways of the primary system of state highways of said Commonwealth of Kentucky and of the Federal Aid Highway System, including the highway known, designated and marked as United States Route Number Sixty (60), and

"WHEREAS, both the State of Indiana and the Commonwealth of Kentucky through and by their respective State Highway Commissions, desire and propose to connect at their common boundary, said trunk line highways in their respective State Highway systems, known and designated in each as United States Route Number Forty-one (41), so that the highways when connected will constitute

and be a continuous and connecting interstate highway of the Federal Aid System, and

"WHEREAS, the continuity of said highway as an interstate highway between the States of Kentucky and Indiana is broken by the Ohio River, which forms the boundary between said States, and

"WHEREAS, said highway in its course is intersected by other trunk highways which form connecting links of other interstate highways extending into the adjoining States of Michigan, Illinois and Ohio, and

"WHEREAS, by Chapter 174 of the Acts of the General Assembly of Kentucky of 1928, the State Highway Commission of Kentucky was and is authorized to construct and maintain or join with any adjoining State, county or municipality thereof, or with any county or municipality of said Commonwealth, or with the United States Government, or either or all of them in the construction, reconstruction and maintenance of bridges across or tunnels under any boundary line stream of Kentucky (including the Ohio River) for the purpose of connecting any primary road of Kentucky with a hard surfaced road in an adjoining State whenever in the judgment of the State Highway Commission of Kentucky the construction of such bridge is deemed necessary or advisable, and

"WHEREAS, an act of the Congress of the United States approved March 3, 1927, authorizes the construction of toll bridges by a State or States as connecting links upon federal aid highways and authorizes the extension of the provisions of the Federal Aid Act to the construction of such projects, and

"WHEREAS, the State of Indiana, its successors and assigns, by an act of the Congress of the United States approved March 2, 1927, was granted and now has Congressional consent to construct, maintain and operate a bridge across the Ohio River at a point near the City of Evansville, Indiana, and to collect tolls for the use of such bridge sufficient to pay one-half of the cost thereof, plus interest thereon at five per centum (5%) per annum, together with the cost of collecting the tolls thereon, and

"WHEREAS, by the provisions of said Act of Congress, the Commonwealth of Kentucky was and is authorized, before or after the completion of said bridge, to acquire an interest in such bridge, not exceeding one-half thereof, upon such terms as may be agreed upon between the two States, and

"WHEREAS, by an Act of the General Assembly of Indiana of 1927, Acts 1927, Chapter 10, page 23, the Indiana State Highway Commission was and is authorized to construct, maintain and operate toll bridges over and across any river or other stream forming the boundary between the State of Indiana and any adjoining State, in order to connect any State or interstate highway now in existence or hereafter to be constructed within said State with any highway now in existence or hereafter to be constructed in an adjoining State, subject to the rules and regulations of the proper authorities of the United States and to the laws of the adjoining State affected, and said Commission was and is authorized to receive aid in the construction thereof by any County in Indiana in which any such bridge or any part thereof is located, and to con-

tract with any such adjoining State in relation thereto, and

"WHEREAS, the State of Indiana, through and by its State Highway Commission, has determined to construct a bridge across the Ohio River at the point which coincides with the southern terminus of said highway, as designated by said Commission, the northern approach of said bridge will be within the County of Vanderburg, Indiana, for the purpose of connecting the aforesaid highways, and

"WHEREAS, said Commission has ascertained as nearly as practicable the probable cost of said bridge, including the approaches and the cost of necessary easements, etc., and has certified the amount of such estimated cost to the Auditor of Vanderburg County, which County has ordered bonds to be sold and issued in an amount equal to one-fourth of such estimated cost, as provided in said act of the General Assembly of Indiana of 1927, and

"WHEREAS, section 3 of said act of the General Assembly of Indiana of 1927 confers upon said Commission, in addition to any and all other powers conferred, express authorization to negotiate with the proper authorities of any such adjoining State, and to contract for and procure the right to build, maintain and operate such bridge or bridges upon that part of any site or sites which may be selected therefor and which shall lie within the boundaries of such adjoining State, and

"WHEREAS, section 16 of said act of the General Assembly of Indiana of 1927 authorizes said Commission to make all reasonable rules and regulations governing the use of any such bridge or bridges consistent with said act and with the laws

of the State of Indiana, the laws of such adjoining State and the laws and regulations of the United States applicable thereto, and

"WHEREAS, by section 19 of said act of the General Assembly of Indiana of 1927, said Commission, as the agent and in the name of the State of Indiana, was and is authorized and empowered, both before or during the construction of any such bridge or after the completion thereof, to co-operate with and enter into a contract or contracts with such adjoining State, acting through its proper authorities or agents, to provide for the payment by such adjoining State of such part of the costs of the construction of such bridge, not exceeding one-half thereof, as may be agreed upon in such contract, and in such contract also to agree upon and determine the time and manner of making by such adjoining State of such payment or payments and all other details in connection therewith; and, by section 21 of said Act, said Commission was and is expressly authorized to negotiate and contract with the proper authorities of such adjoining State in respect to the maintenance of any such bridge, and

"WHEREAS, by section 20 of said act of the General Assembly of Indiana of 1927, said Commission, upon the payment by any such adjoining State of any part of the cost of the construction of any such bridge, is authorized and directed to issue, in the name of the State of Indiana, to such adjoining State, a proper certificate or instrument of transfer or acknowledgment evidencing the amount so contributed by such adjoining State and transferring title to such adjoining State to a corresponding interest in such bridge, whereupon title

to said bridge by the provisions of said act, vests jointly in the State of Indiana and such adjoining State, and

"WHEREAS, the Commonwealth of Kentucky, by Chapter 172 of the Acts of the General Assembly of Kentucky of 1928, authorized the State Highway Commission of Kentucky to build, purchase and own for and on behalf of said Commonwealth, bridges and approaches thereto on the State Primary System of Highways across any stream in said State and across any stream which is a boundary line between Kentucky and any adjoining State, as in its opinion may be desirable, and to acquire by gift, purchase or condemnation proceedings, any bridge, real estate, privileges or easements or other property, real or personal, that in its opinion may be useful or helpful in ultimately doing away with toll bridges on the State Primary System of Highways, and further authorized and empowered said Commission to charge and collect tolls for passage over any such bridge or bridges, and to issue and sell bonds to obtain money with which to build, cause to be built, purchase, condemn or otherwise acquire bridges and approaches thereto, said bonds and interest thereon to be retired by the collection of tolls and the cost of maintaining said bridge or bridges and the collection of tolls to be paid from the tolls collected until such bonds are retired, and

"WHEREAS, by Chapter 172 of the Acts of the General Assembly of Kentucky of 1928, the State Highway Commission of Kentucky was and is empowered to charge and collect tolls and fix the rates thereof for such length of time as, in the opinion of said Commission, will be sufficient to pay such

bonds, and interest thereon, as may have been issued for the erection or purchase of any bridge or bridges; and such bonds may be retired at any time thereafter, not less, however, than one year after their issue; and said Act provides that the rate of tolls to be charged and collected, if fixed in any bond or bonds, shall not be reduced without the consent of the holder or holders thereof, and

"WHEREAS, by the aforesaid act of the General Assembly of Kentucky, the State Highway Commission of Kentucky was and is authorized and empowered to secure payment of such bonds as may be issued under the provisions of said Act, by a first lien on all tolls collected for the use of such bridge or bridges, and also by a first lien on such bridge or bridges, approaches and all real estate appurtenant thereto, and

"WHEREAS, by Chapter 174 of the acts of the General Assembly of Kentucky of 1928, the State Highway Commission of Kentucky was and is authorized to enter into a contract with any such adjoining State for the purchase of an interest in any such connecting bridge, not exceeding a one-half interest therein, and to agree with any such adjoining State upon the purchase price and the cost of said bridge, upon the terms of purchase, the proportion of the cost of such bridge to be paid by the State Highway Commission of Kentucky, and the time, amount and manner of making payments thereon, and to provide by contract for the joint maintenance and upkeep of any such bridge, and

"WHEREAS, by said Act the State Highway Commission of Kentucky was and is empowered to locate or agree upon a location of any such bridge or tunnel, provided that no such bridge or

tunnel shall be located further than ten (10) miles from the terminus of the primary road intended to be reached thereby; and by said Act, the State Highway Commission was and is authorized to construct such road as may be necessary to connect such bridge or tunnel with the primary road intended to be served thereby, and such connecting road, when so constructed, shall become and be a part of the primary system of the State Highways of the Commonwealth of Kentucky, and shall be maintained as such, and

"WHEREAS, the Indiana State Highway Commission, pursuant to the act of Congress of March 2, 1927, has made or caused to be made soundings and borings at said site in the work of the construction of the bridge at said point and has partially prepared plans therefor, and received the approval thereof by the authorities of the War Department of the United States.

"NOW, THEREFORE, in consideration of the foregoing and of the mutual benefits, terms, covenants and conditions hereinafter provided, it is agreed between the parties herein, through and by their respective State Highway Commissions as follows:

"1. The State of Indiana, through and by its said State Highway Commission, in co-operation with the Commonwealth of Kentucky as hereinafter provided, shall proceed with the construction of a bridge across the Ohio River between Evansville, Indiana, and Henderson, Kentucky, at the point designated in the plans and specifications, hereinafter provided for, as authorized by the Act of Congress first above mentioned.

"2. The bridge shall be constructed according to plans and specifications to be prepared by or

under the supervision and direction of the Indiana State Highway Commission and approved by the Kentucky State Highway Commission. Said plans and specifications shall be submitted to and subject to the approval of the Kentucky State Highway Commission.

"Said bridge when completed shall be a lawful and legal bridge and shall be dedicated as an instrument of interstate commerce for the equal use of all citizens of the United States and of any other persons who may be entitled to use thereof, and shall constitute and be a part of the system of Federal Highways, roads and bridges.

"3. The State of Indiana, through and by its State Highway Commission, shall, as soon as practicable and subject to the approval of the Kentucky State Highway Commission, enter into a contract or contracts for the construction of said bridge. The contract or contracts shall be let to the lowest and best bidder or bidders after said Indiana State Highway Commission shall have advertised for competitive bids in the manner and for the length of time required by the laws of each State involved. Said contract or contracts shall not be binding until approved by the Kentucky State Highway Commission.

"4. The Commonwealth of Kentucky, through and by its State Highway Commission, hereby gives its consent and approval to the construction of said bridge over said Ohio River at the point designated, and further agrees that tolls may be collected for the use thereof, subject to the regulations of the proper authorities of the War Department of the United States, and subject also to the covenants hereinafter set forth.

"5. The State of Indiana shall pay all estimates as the work progresses and shall bill the Kentucky State Highway Commission for one-half of the amount of each estimate so paid, at the time of payment of such estimate or within a reasonable time thereafter, which bills shall be paid promptly by the Commonwealth of Kentucky from the funds derived from the sale of bonds as hereinafter provided.

"6. The Commonwealth of Kentucky, through and by its State Highway Commission hereby agrees to purchase, subject to the terms, covenants, conditions and limitations in this contract provided, from the State of Indiana a one-half undivided interest in and to said bridge, to be constructed as herein provided. 'Bridge' as used herein shall be construed to include the necessary approaches as hereinafter limited and defined, and all rights, privileges and appurtenances thereunto belonging or in any wise appertaining, except the right and privilege of charging and collecting toll as hereinafter provided, which right and privilege is to belong exclusively to the Commonwealth of Kentucky as hereinafter stipulated. 'Bridge' as used herein shall also be construed to include all rights and privileges conferred upon the States of Indiana and Kentucky, by the aforesaid Acts of Congress, and aforesaid Acts of the General Assemblies of Indiana and Kentucky respectively.

"7. The State of Indiana, through and by its State Highway Commission, hereby agrees to sell, assign and convey to the Commonwealth of Kentucky, subject to the terms, covenants and conditions in this contract provided, a one-half undi-

vided interest in and to said bridge, as defined in the next preceding paragraph number 6.

"8. The necessary rights-of-way, site or sites and approaches necessary for the construction and operation of said bridge, within the Commonwealth of Kentucky, shall be acquired by the Commonwealth of Kentucky by gift, purchase or condemnation, and the cost thereof shall be paid by the Commonwealth of Kentucky, and the amount thereof shall be construed to constitute a part of the cost of said bridge; and in like manner the necessary rights-of-way, site or sites and approaches necessary for the construction and operation of said bridge within Indiana, shall be acquired by the State of Indiana and paid for by said State, and the cost thereof shall be construed to be part of the cost of said bridge; and each State shall take credit for the amount so paid respectively before the final estimate is paid and final settlement made.

"9. The sum of $16,471.25 heretofore expended by the Indiana State Highway Commission on engineering work, on the preparation of preliminary studies and plans, and on the making of foundation borings, and any sums which shall be expended by said Commission in the sampling and testing of cement, the making of laboratory tests on concrete specimens and such other testing in connection with the construction of said bridge, and the necessary engineering and inspection on the embankment approaches as shall be done directly by the State of Indiana, and approved by the Kentucky State Highway Commission, shall be a part of the joint cost of the bridge. Except as otherwise provided in this agreement expenditures by either State for engineering, clerical or other fees for pro-

fessional, administrative or supervisory services shall not be included in the joint cost of the bridge.

"10. The State of Indiana, through and by its State Highway Commission, shall construct, improve and maintain the highway hereinabove mentioned, within the State of Indiana, to said bridge on the Indiana side at the point hereinafter designated as the end of the bridge on the Indiana side. The Commonwealth of Kentucky, through and by its State Highway Commission, shall construct, improve and maintain the highway from the end of the bridge, at the point hereinafter designated on the Kentucky side, to connect with the nearest improved State Primary road. Said highways shall be so constructed as to form, by the use of said bridge, a connecting interstate highway of the Federal Aid System between the two States.

"11. The State of Indiana, through and by its said Commission may employ a consulting engineer to prepare plans and specifications to aid its engineering forces in the construction of said bridge and to render such further services as are usually rendered by such consulting engineer or engineers, and the fees of such consulting engineer shall be construed as part of the cost of said bridge, and the State of Indiana shall make payment of such fees to such consulting engineer as may be provided in the contract with him and bill one-half of the payments so made to the Kentucky State Highway Commission, which bills shall be paid from the same funds and in the same manner as provided in paragraph number 5 herein. Before such engineer may be employed, the selection and contract of employment shall be approved by the Kentucky State Highway Commission. The consulting engineer's

fee shall include the salary, fees, compensation and expenses of his employees and assistants, and all other expenses in connection therewith, and such fee shall not exceed five per centum (5%) of the cost of the bridge and approach spans, exclusive of earth fills, approaches, rights-of-way and other cost expressly excluded by paragraph number 9 herein.

"12. Each State shall be entitled to have one or more inspectors present at any and all times to inspect any and all work done on said bridge, but each State shall pay the salary, fees, compensation and expenses of its own inspector or inspectors, which payments shall not be construed as part of the cost of the bridge.

"13. The State of Indiana, through and by its State Highway Commission, during the progress of the work on said bridge shall furnish itemized statements showing the progress and cost of the work. Said statements shall correspond as to time and issuance with the progress estimates furnished to the contractor or contractors. In addition thereto the books and records concerning the project shall be available at all times during office hours at the offices of the Indiana State Highway Commission at Indianapolis, Indiana, for examination or audit, or both, by the officers or agents of the Kentucky State Highway Commission or of the Commonwealth of Kentucky.

"14. The State of Indiana, through and by its State Highway Commission, to perpetuate the interest of Kentucky in and to the use of said bridge, hereby agrees to and does grant, sell and convey to the Commonwealth of Kentucky, an easement in and to its interest in said bridge, rights-of-way and approaches, including any part of the ap-

proach in Indiana, now owned or which may hereafter be acquired by the State of Indiana; and in like manner and for the same purpose, the Commonwealth of Kentucky hereby agrees to and does grant, sell and convey to the State of Indiana an easement in and to its interest in said bridge, rights-of-way and approaches, including that part of said bridge, rights-of-way and approaches within the Commonwealth of Kentucky, now owned or which may be hereafter acquired by the Commonwealth of Kentucky.

"It is agreed by the parties hereto that said bridge shall become and be a part of the interstate highway above mentioned and shall be used as an instrument of interstate travel and commerce subject, to the collection of tolls to the extent and for the purposes, and only to the extent and for the purposes as in this contact povided.

"15. The Commonwealth of Kentucky, through and by its State Highway Commission, agrees to issue and sell a sufficient number of revenue bonds, of the denominations which it shall determine, to provide a sum of money equal to or in excess of one-half of the estimated cost of said bridge. Said bonds shall be issued and sold under the authority of and pursuant to the provisions and limitations of Chapter 172, Acts of the General Assembly of Kentucky, 1928. A sufficient amount of bonds shall be sold to provide sufficient money to pay one-half of the total cost of said bridge, and if any money is derived from the sale of such bonds in excess of one-half the total cost of the bridge, such excess shall become part of the fund to be used in retiring said bonds. The fund created by the sale of said bonds shall be used by the Common-

wealth of Kentucky to pay one-half of the cost of said bridge, as provided in paragraph number 5 herein and as in other paragraphs provided.

"16. The Commonwealth of Kentucky shall from time to time pay to the State of Indiana, for the use and benefit of its said State Highway Commission, the bills submitted in accordance with the provisions of paragraph number 5 herein, said bills to be submitted upon estimates duly prepared, certified and issued during the progress of said construction work. Said bills shall be for only one-half the amount paid by the State of Indiana to the contractor or contractors upon progress estimates and final estimate.

"When said bridge shall have been completed, accepted and ready for use, the Commonwealth of Kentucky, from the moneys herein provided for, shall pay the balance, if any, due the State of Indiana, less One Thousand Dollars ($1,000.00), which amount shall not be paid until a sufficient amount of tolls shall have been collected by the Commonwealth of Kentucky to pay the cost of collection thereof, the cost of maintenance while tolls are being collected, and to pay and retire fully the bonds which shall have been issued by the Commonwealth of Kentucky, and interest thereon as herein provided, at which time said balance of One Thousand Dollars (1,000.00) shall be paid by the Commonwealth of Kentucky, and it shall thereupon be vested with a full one-half undivided, legal and equitable title and interest in and to said bridge, and all privileges and appurtenances thereunto belonging or in any wise appertaining.

"17. Of the moneys derived from the Commonwealth of Kentucky by the State of Indiana

hereunder, the Treasurer of State of the State of Indiana shall pay to the County of Vanderburg in said State amounts totaling any sum derived from said County and used in the construction of said bridge, under the provisions of Chapter 10 of the Acts of the General Assembly of Indiana of 1927.

"18 The State of Indiana, through and by its State Highway Commission, does hereby sell, assign and transfer unto the Commonwealth of Kentucky all rights and privileges granted by the aforesaid Acts of Congress to charge and collect tolls for the use of the aforesaid bridge, and does further sell, assign and grant unto the Commonwealth of Kentucky full ownership of such tolls as may be collected, and agrees that the full amount thereof may be used by the Commonwealth of Kentucky in the manner and for the purposes as in this contract provided. The collection of tolls shall begin as soon as the bridge is open for traffic. Pursuant to the provisions of Chapter 172 of the Acts of the General Assembly of Kentucky of 1928, and subject to the Acts of Congress and the rules and regulations of the proper authorities of the United States Government, the Commonwealth of Kentucky, through and by its State Highway Commission, shall have the right to charge and collect tolls for the use of said bridge sufficient to raise an amount of money equal to one-half of the cost of said bridge plus five per centum (5%) interest thereon per annum, and the cost of collecting said tolls and of maintaining said bridge during the period in which tolls may be collected as herein stipulated.

"19. The rates and classification of tolls shall be fixed and established by the Kentucky State

Highway Commission subject to the laws and regulations of the United States of America, so that such rates shall be sufficient to assure retirement of bonds hereinabove provided to be issued, within fifteen (15) years.

"20. As soon as a sufficient amount of tolls shall have been collected by the Kentucky State Highway Commission, for the use of said bridge, to pay the cost of collection thereof, the full cost of maintenance of said bridge, and to fully pay and retire the bonds and interest thereon, which shall have been issued and sold as hereinabove provided, the collecting of tolls, for the use of said bridge, shall thereupon cease, and the bridge shall become and forever remain a free bridge.

"21. During the time tolls are being collected for the use of said bridge, the structure shall be maintained by the Commonwealth of Kentucky and the cost thereof shall be paid out of the tolls collected for the use of said bridge. After sufficient tolls shall have been collected for the purposes aforesaid and the bridge becomes a free bridge, then it shall be maintained and operated at the joint and equal expense of the two contracting States.

"22. The Kentucky State Highway Commission shall submit to the Indiana State Highway Commission quarterly itemized statements showing status of bond account, operating expense and maintenance cost, toll collections and disbursements; and the books and records containing said information shall be available at all times during office hours at the offices of the Kentucky State Highway Commission at Frankfort, Kentucky, and also in like manner records and data at the toll

houses of the bridge, for examination or audit by any officer or agent of the Indiana State Highway Commission or of the State of Indiana.

"23. The Commonwealth of Kentucky shall have the privilege of paying and retiring the aforesaid bonds or any number thereof from any funds that may be available, or made available for that purpose, at any time after one year from the date of sale of such bonds, and when said bonds, and the interest thereon, are fully paid and are retired, the aforesaid balance of one thousand and no/100 dollars ($1,000.00) owing the State of Indiana shall be paid by the Commonwealth of Kentucky, and the bridge shall thereupon become and be a free bridge as hereinabove provided in paragraph number 20.

"24. The State of Indiana, through and by its State Highway Commission, agrees to join with the Commonwealth of Kentucky, through and by its State Highway Commission in the execution of such instrument or instruments of writing as may be required by the purchaser or broker of the aforesaid bonds, to give and grant unto such person, firm, co-partnership, corporation or trustee, as may be designated for that purpose, a first, superior and paramount lien on all tolls to be collected for the use of said bridge, as in this contract provided, and also a first, superior and paramount lien on a one-half undivided interest in and to said bridge; and the State of Indiana, in like manner, further agrees to join with the Commonwealth of Kentucky in making and executing such further assurances as may reasonably be required to satisfactorily secure the payment of the aforesaid bonds by pledge of

the tolls and by lien on said bridge in so far as it has legal authority.

"25. The Indiana State Highway Commission, in the name of the State of Indiana, shall issue from time to time, as requested by the Kentucky State Highway Commission, certificates properly executed and acknowledged, so as to be recordable in each State, evidencing the amount paid by the Commonwealth of Kentucky, and transferring to it an equitable interest and title in and to such bridge in the proportion which the amount so paid bears to the total cost thereof, and the interest and title of each State shall be in proportion to the respective contributions to the cost thereof; and when the Commonwealth of Kentucky shall have paid to the State of Indiana, one-half of the entire cost of said bridge, the Indiana State Highway Commission, in the name of the State of Indiana, shall execute, acknowledge and deliver to the Kentucky State Highway Commission for the use and benefit of the Commonwealth of Kentucky a proper instrument of writing conveying to it a full one-half legal and equitable title in and to said bridge; and until said Commonwealth has fully paid to the State of Indiana one-half of the entire cost of said bridge, as herein provided, it shall have only an equitable interest in and to said bridge and only in the proportion that the payments so made by the Commonwealth of Kentucky to the State of Indiana bear to the total cost of said bridge.

"26. The word "approaches" as used in paragraph number 6 herein shall be construed to include all necessary earth embankments, revetments, drainage structures, pavements, guard rails

fences, and rights-of-way from station number 217/00 on the Kentucky side of the Ohio River, which is approximately 5,620 feet from the low water mark on the south side of said river, to station number 458/82 on the Indiana side of said river, which is approximately 17,072 feet from the low water mark on the north side of said river.

"27. The terms 'necessary rights-of-way, site or sites and approaches' as used in paragraph number 8 shall be construed to mean only that part thereof between the stations named in the next preceding paragraph number 26.

"28. Upon the signing and execution of this contract by the Commonwealth of Kentucky through and by its State Highway Commission, and upon approval by its Attorney General as to legality and form, it shall be submitted to the State of Indiana, and upon the date of the signing and execution thereof by the State of Indiana, through and by its State Highway Commission, and upon approval of its Attorney General as to legality and form and when signed and approved by its Governor, the contract shall become and be binding upon the two States.

"IN WITNESS WHEREOF, the Commonwealth of Kentucky, through and by its undersigned Highway Commission and the Members thereof, and the State of Indiana, through and by its undersigned Highway Commission, the Members and the Director thereof, have hereunto affixed their signatures and the seals of their respective Highway Commissions.

"Executed in duplicate.

COMMONWEALTH OF KENTUCKY,
By the Kentucky Highway Commission,
on the 11th day of September, 1928.

BEN JOHNSON,
Chairman,

W. C. HANNA,

E. S. HELBURN,

C. W. CRAIG.

STATE OF INDIANA,
By the Indiana State Highway Commission, on this 12th day of September, 1928.

JOHN D. WILLIAMS,
Director,

ALBERT J. WEDEKING,
Chairman,

GEO. E. HERSHMAN,

ROBT. H. BOREN,

JESS L. MURDEN.

Approved:

FLEM D. SAMPSON,
Governor of Kentucky.

ED. JACKSON,
Governor of Indiana.

Approved as to legality and form:

JAMES W. CAMMACK,
Attorney General of Kentucky.

ARTHUR L. GILLIAM,
Attorney General of Indiana.

STATE OF KENTUCKY }
FRANKLIN COUNTY } Sct.

"I, the undersigned, a Notary Public, within and for the County and State aforesaid, certify that the foregoing instrument of writing between the Commonwealth of Kentucky, through and by its State Highway Commission, and the State of Indiana, through and by its State Highway Commission, was duly produced before me in said County and State on the 11th day of September, 1928, by Ben Johnson, Chairman of the Kentucky State Highway Commission, W. C. Hanna, E. S. Helburn, and C. W. Craig, Members of and constituting the State Highway Commission of Kentucky, and duly acknowledged by each of them to be the act and deed of the Commonwealth of Kentucky, of said Commission, and their own act and deed as members thereof.

Given under my hand and notarial seal this 11th day of September, 1928.

My commission expires the 1st day of March, 1931.

FLORA E. SMITH,
Notary Public Franklin County, Ky.

STATE OF INDIANA }
COUNTY OF MARION } ss.

"Before me, a Notary Public within and for the County of Marion, State of Indiana, on this 12 day of September, 1928, personally appeared the above named Albert J. Wedeking, Chairman of the Indiana State Highway Commission, George E. Hershman, Robert B. Boren and Jess L. Murden,

Members of the Indiana State Highway Commission, and John D. Williams, Director thereof, and duly signed the above and foregoing contract and acknowledged the execution thereof for and on behalf of the State of Indiana.

M. O. McCONNELL,
Notary Public.

My commission expires Apr. 2, 1932."

17. Said contract provides for immediate and continued performance of the covenants therein until said bridge has been completed and is ready for travel.

18. The State of Indiana, by its State Highway Commission and proper officers, immediately began the performance of the covenants of said contract after its execution, and said State and its said officers are now ready, able and anxious to perform said contract, and would do so but for certain litigation which has arisen involving the legality of said contract between citizens of Indiana and the officers of said State whose function it is to perform the covenants of said contract for the State of Indiana, on its part to be performed.

19. On September 28, 1928, the above named defendant citizens of the State of Indiana, filed their complaint as plaintiffs against the members of the Indiana State Highway Commission and other officers of the State of Indiana, in a Court of general civil jurisdiction in the State of Indiana, namely in Room 2 of the Marion Superior Court of Marion County, Indiana, before the Honorable Louis D. Hay, as judge of said Court. The purpose of said complaint is to enjoin the

defendant officers of the State of Indiana from performing the covenants of said contract entered into by and between the Commonwealth of Kentucky and the State of Indiana. The theory of said complaint is that there is no authority in law under which Indiana could enter into said contract and that the same is void and of no force and effect.

20. The return day fixed in the summons issued in said cause is October 20, 1928. There has been no appearance by the defendant in said cause and no interlocutory or other order has been made therein. The plaintiffs in said cause intend to, and will, unless enjoined by this Court, prosecute said cause, and said Marion Superior Court and said judge thereof, will take jurisdiction of said cause, try the same and render a final judgment therein unless said plaintiffs, who are made defendants in this cause are enjoined from prosecuting said cause.

21. The Commonwealth of Kentucky is not made a party, and cannot be made a party to said cause now pending in said Indiana State Court; but its rights arising out of said contract are vitally involved by the delay which will be caused by said litigation in said Court and will be vitally affected by any judgment which said Court or any other Indiana State Court may render in said cause. No adjudication that might be made in said cause in any Court of the State of Indiana would or could be binding on the Commonwealth of Kentucky.

22. Although it is not known how the Courts of Indiana might determine said cause now pending in said Marion Superior Court, the State of Indiana will not perform the covenants of said contract further until there is a final adjudication of said cause by the Supreme Court of Indiana or of this Honorable Court and if such final adjudication should be adverse, the State of Indiana intends not to perform said contract at all. An appeal will be taken to the Supreme Court of Indiana from the final judgment that may be rendered by said Marion Superior Court by either side that may lose in said Court. The period required for a final adjudication of said cause in the Courts of Indiana will be not less than one year, and the State of Indiana will during all of said period desist from further performance of the covenants of said contract on its part to be performed. Said contract contemplates and provides for immediate and continuous performance of its covenants by the State of Indiana and such failure on the part of the State of Indiana to perform the covenants of said contract during said period of litigation will cause a long and unwarranted delay of performance which will in itself constitute a breach of said contract by the State of Indiana. The prosecution of said litigation in said State Court of Indiana by the aforementioned defendant citizens of Indiana will cause such breach of said contract by the State of Indiana.

23. Such breach of said contract by the State of Indiana will cause at least a delay of more than one

year in completion of said bridge and in the time when the same would be available for use by the traveling public, and thereby will cause great and irreparable damage and injury to the Commonwealth of Kentucky and to the citizens of Kentucky for whose benefit the Commonwealth of Kentucky executed said contract for the construction of said bridge. The Commonwealth of Kentucky would have no adequate remedy either in law or in equity to redress the wrong sustained by it and its citizens because of such breach of said contract, and it has no other adequate remedy than that of injunction against the State of Indiana to prevent such breach of said contract and to prevent the defendant citizens of Indiana from causing such breach by the State of Indiana.

24. The aforementioned defendant citizens of Indiana will sustain no damages and they cannot show that either they or any other citizens of Indiana will sustain any damages or injuries by reason of performance by the State of Indiana of the covenants of said contract, on its part to be performed.

25. Said bridge when constructed according to said contract will be a lawful interstate bridge and a part of an important interstate highway constituting an important rural post road of the United States, designated and officially known as United States Route Number Forty-one (41). Said bridge will, as provided by said contract, be publicly and jointly owned by the Commonwealth of Kentucky and the State of Indiana, and if the United States extends Federal aid for the con-

struction as it may under existing Acts of Congress, the United States will also have an interest in said bridge. The object of said contract, and the bridge to be constructed under its provisions, are of great public interest and benefit to all citizens of all States and of the United States, who will travel over said United States Route Number Forty-one (41), as well as to the United States in using it as a part of one of its rural post roads and to the States of Indiana and Kentucky.

26. The public interest and public benefit involved in the performance of the covenants of said contract and the construction of said bridge without delay require that the controversy presented in the litigation instituted by defendant citizens of Indiana in said State Court of Indiana to prevent the performance of the covenants of said contract, be promptly and expeditiously determined in a complete and final manner so as to adjudicate the rights of all parties interested in said contract, including the rights of the Commonwealth of Kentucky. The only Court that can thus determine said controversy as to all interested parties is the Supreme Court of the United States in the exercise of its original jurisdiction, and the only interested party that may now complain in said Court is the Commonwealth of Kentucky. The Commonwealth of Kentucky has no remedy in the premises except the one it now seeks in this Honorable Court.

27. The State of Indiana and the Commonwealth of Kentucky, by their respective Highway Commissions, had complete statutory authority to enter into

said contract for the construction of said bridge. The northern approach to said bridge will rest on, and extend over Indiana soil, in the county of Vanderburg of said State. The southern approach to said bridge will be on Kentucky soil, and the bridge structure proper will span the waters of the Ohio River, over the low water bed of said river in its present meandered location as aforesaid.

28. The State of Indiana, by its State Highway Commission, had full authority to enter into said contract and each provision thereof, by virtue of certain Acts of the General Assemblies of the State of Indiana, to wit: Chapter Ten (10) of the Acts of 1927 of said General Assembly, and Chapter 53 of the Acts of 1919 of said General Assembly as amended. Copies of said Acts as now in force are copied in full in the Appendix, marked "Exhibits A and B" respectively, and made a part hereof the same as if copied in full herein.

29. The Commonwealth of Kentucky, by its State Highway Commission, had full authority to enter into said contract and each provision thereof by virtue of statutes enacted by the General Assembly of the Commonwealth of Kentucky, to wit:

> Section 4356t-3, Kentucky Statutes, Baldwin's 1926 Supplement to Carroll's 1922 Edition, Section 4356t-4, Kentucky Statutes, Carroll's 1922 Edition, Chapter 174, Acts of General Assembly of Kentucky, 1928, Chapter 172, Acts of General Assembly of Kentucky, 1928.

Said Statutes and Acts are copied in full in the Appendix, marked "Exhibits C, D, E and F" respectively and made a part hereof by reference.

30. The said contract and its provisions were further authorized by the following Acts of Congress, to wit: "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," approved July 11, 1916, "Federal Highway Act," approved November 9, 1921, "An Act to permit the granting of federal aid in respect of certain roads and bridges," approved March 3, 1927, and "An Act granting the consent of Congress to the Indiana Bridge Company to construct, maintain and operate a bridge across the Ohio river at Evansville, Indiana," approved March 3, 1927. The two Acts last mentioned are copied in full in the Appendix, marked "Exhibits G and H" respectively, and are incorporated herein by reference.

31. An emergency exists for the issuance of a temporary injunction against the above named defendant citizens of Indiana to prevent them from prosecuting the cause instituted by them in said Marion Superior Court during the pendency of this suit. Said defendants will, unless enjoined, as plaintiffs in said Marion Superior Court proceed to prosecute said action after the 20th day of October, 1928, which date is the return day fixed in said action, and thus cause irreparable loss and damage to the Commonwealth of Kentucky whose rights are involved in said litigation, without representation therein by it, and without jurisdiction in said

Court to adjudicate any rights of said Commonwealth. Moreover, to permit said defendants to prosecute said cause as plaintiffs therein during the pendency of this cause would be in violation and in derogation of the jurisdiction of this Honorable Court.

32. The breach of said contract as aforesaid and the causing of such breach as aforesaid will cause the Commonwealth of Kentucky and its citizens irreparable injury and damage for the redress of which no adequate remedy at law exists. The Commonwealth of Kentucky, therefore, brings this action on behalf of itself and of the people of said Commonwealth, for the purpose of establishing the validity of said contract and its rights therein and thereunder and for its purpose of protecting such rights of said Commonwealth and its people against loss thereof which will result from breach of said contract. The Commonwealth of Kentucky on its part is ready, able and willing to perform the covenants of said contract, on its part to be performed.

WHEREFORE, your orator prays that the defendants may be required to answer the allegations hereinbefore set forth in this Bill of Complaint, and that on final hearing of this cause an injunction be issued, under the seal of this Court, restraining the defendant State of Indiana, and each of its officers, agents and servants from breaching said contract by refusing to perform the same or any part thereof; and that the defendant citizens of the State of Indiana, and each of them, be restrained from prosecuting the said cause instituted

by them as plaintiffs against the officers of the State of Indiana, in the said Room Two (2) of said Marion Superior Court, in said Marion County, Indiana; and your orator prays that this Court fix a time and place for hearing complainant's application for a temporary injunction against the defendant citizens of Indiana to restrain them from prosecuting their said cause in said Marion Superior Court, during the pendency of this suit, and that this Court cause notice to said defendants to be issued and served of such hearing, for such temporary injunction; and your orator also prays for such other and further relief as to this Honorable Court may seem meet and consistent with equity and good conscience.

PARAGRAPH II.

For its second paragraph of complaint, complainant says:

Clauses One (1) to Thirty-two (32), both inclusive, as set out in Paragraph Number 1 of this complaint are incorporated into this the second paragraph of complaint, and are by reference made a part hereof to the same extent as if copied in full herein. The matters set out in each and all of said clauses are here reiterated as true and are here made a part of this second paragraph of complaint.

33. The State of Indiana, by said written contract, agreed to acquire title to the real estate in Indiana necessary for the construction of said bridge, abutments, and approaches thereto, and to construct said

bridge according to certain plans and specifications to be prepared by the consulting engineers which have been employed by the State of Indiana, with the approval of the Commonwealth of Kentucky, and to convey to the Commonwealth of Kentucky a one-half interest in and to said bridge, abutments, approaches and real estate. The Commonwealth of Kentucky has no power to acquire said real estate in Indiana by condemnation.

34. The General Assembly of the State of Indiana has made the necessary appropriation of money for the construction of said bridge contemplated by said contract, and there is now in the treasury of said State sufficient money to enable the officers of said State to perform said contract for the State of Indiana.

35. The State of Indiana, with the approval of Kentucky has employed consulting engineers, as provided by said contract, and said engineers thus employed have contracted with the State of Indiana to prepare the necessary plans and specifications for said bridge, and to supervise the construction thereof until said bridge is completed, and said engineers are ready, able and willing to fully perform the covenants of said contract, on their part to be performed.

36. The State of Indiana will, if permitted by the Courts, perform the covenants of said contract on its part to be performed according to its terms, and said State will perform all of said covenants of said con-

tract if this Honorable Court decrees specific performance thereof.

WHEREFORE, your orator prays that the defendants may be required to answer the allegations hereinbefore set forth, and that upon final hearing a decree for specific performance of said contract by the State of Indiana, its officers, agents and servants issue under the seal of this Honorable Court requiring the State of Indiana, its officers, agents and servants to perform the covenants of said contract, on its part to be performed, according to its terms. Your orator prays that the defendant citizens of Indiana be required to appear and answer as to any interest they may have in said contract or show cause why the remedy sought by the Commonwealth of Kentucky in this bill of complaint should not be granted; and your orator also prays for such other and further relief as to this Honorable Court may seem meet and consistent with equity and good conscience.

May it please Your Honors to grant unto your orator a writ of subpoena under the seal of this Honorable Court, directed to the Governor and Attorney General of the State of Indiana and to the above named defendant citizens of Indiana, commanding them and each of them, on a day certain to be therein named and under a certain penalty, to be and appear in this Honorable Court, then and there to answer, but not make oath (answer under oath being expressly waived) all and singular the matters and things hereinbefore set forth, and to abide such further orders and decrees

of the Court as may be made against the said defendants or either of them.

JAMES W. CAMMACK,
Attorney General of the Commonwealth of Kentucky,

M. B. HOLIFIELD,
Assistant Attorney General of the Commonwealth of Kentucky,

CLIFFORD E. SMITH,
Assistant Attorney General of the Commonwealth of Kentucky,

Solicitors for Complainant, the Commonwealth of Kentucky.

UNITED STATES OF AMERICA
COMMONWEALTH OF KENTUCKY } ss.
COUNTY OF FRANKLIN

James W. Cammack, being first duly sworn, on oath says that he is the duly elected, qualified and acting Attorney General of the Commonwealth of Kentucky; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true to his own knowledge; and that as such Attorney General, he is duly authorized to pray leave to file the said bill of complaint.

JAMES W. CAMMACK,
Attorney General of the Commonwealth of Kentucky.

Subscribed and sworn to before me by James W. Cammack this 11th day of October, 1928. My commission expires the 20th day of March, 1932.

JANE WILLIAMS MOORE,
Notary Public in and for Franklin County, Ky.

EXHIBIT A.

[Acts of the General Assembly of Indiana of 1927.]

CHAPTER 10.

AN ACT concerning the construction, operation and maintenance of highway bridges over and across any river or stream forming the boundary line between the State of Indiana and any adjoining state; prescribing the rights, powers and duties of the Indiana state highway commission in connection therewith; providing funds therefor; providing for the acquisition of necessary property and rights; the imposition, collection, disposition and discontinuance of tolls and the appointment, duties, powers and liabilities of toll collectors; requiring certain Indiana counties to afford, under designated conditions, financial aid in the construction of such bridges, to procure funds for that purpose by the issuance of bonds and to levy taxes for the retirement of such bonds; providing for the necessary approval and consent of any such adjoining states and of the United States; authorizing the execution of contracts with the proper authorities of any adjoining state relative to the construction, maintenance and operation of such bridges and the acceptance of funds therefrom and the disposition of such funds; providing where the title to such bridges shall vest; prescribing penalties and repealing certain laws.

[S. 161. Approved February 18, 1927.]

Bridges, Highway—Construction by State Highway Commission Over Stream Forming Boundary Line Authorized.

SECTION 1. *Be it enacted by the general assembly of the State of Indiana,* That the state highway commission of the State of Indiana be and it is hereby authorized and empowered, in its discretion, to construct a highway bridge over and across any river or other stream forming the boundary line between the State of Indiana and any state adjoining the State of Indiana, notwithstanding the waters of such rivers or streams may not at all times extend to or reach such boundary line, whenever such bridge or any part thereof, including the approaches there to as a part thereof, will be within the State of Indiana and will directly connect any state or interstate highway now in existence or hereafter constructed within the State of Indiana with any interstate or other public highway now in existence or hereafter constructed in such adjoining state, and although

such river or stream may be located either partially or wholly within the territorial limits of such adjoining state; and that, in constructing and maintaining any such bridge, including the approaches thereto as a part thereof, and in providing the necessary personal and real property and easements in real property which may be required for the proper, effective and convenient location, construction and operation of any such bridge, the said state highway commission be, and it is hereby, authorized and empowered to use and expend so much of the funds provided, or to be provided, by law for its use as may be found by it to be reasonably necessary for such purposes.

Location—Use or Acquisition of Property and Easements in Adjoining State.

SEC. 2. Any such bridge may be so constructed across and over any such river or other stream at any point determined upon and designated by said state highway commission, but only with the consent and approval of and subject to the regulations of the proper authorities of the United States having jurisdiction in such matters, whenever such jurisdiction of the United States exists, and with the consent and approval of the proper authorities of such adjoining state or of the United States; and express authority is hereby conferred upon said state highway commission to build any necessary part of any such bridge, including the approaches thereto as a part thereof, within the territorial limits of any such adjoining state and for that purpose to utilize any location or right of way provided by such adjoining state, within its boundaries, if such location and right of way be so provided; and if the United States or such adjoining state, or any duly constituted agency of either, shall acquire the necessary personal and real property and easements in real property situate in such adjoining state and suitable for use in the proper, effective and convenient location, construction and operation of such bridge, then and in that event the said state highway commission is hereby authorized and empowered to take over

and acquire, by contract or agreement, and make use of such personal and real property and easements in real property so situate in such adjoining state for the necessary purposes of the effective and convenient location, construction and operation of such bridge, and if unable to procure the necessary personal and real property and easements in real estate in such adjoining state by contract or agreement, after reasonable effort in that direction, then said state highway commission shall have the right and it is hereby authorized to take, in the name and on behalf of the State of Indiana, such proceedings for condemnation of such necessary personal and real property and easements in real property in such adjoining state as may be permitted or provided for by the laws of such adjoining state or by the laws of the United States.

Authorization for Procuring Rights as to Part of Site in Adjoining State.

SEC. 3. In addition to any and all other powers conferred upon it by this act, said state highway commission is hereby expressly authorized to negotiate with the proper authorities of any such adjoining state, and to contract for and procure the right to build, maintain and operate such bridge upon that part of any site which may be selected therefor and which shall lie within the boundaries of such adjoining state.

Estimate of Cost—Issuance of Bonds by County.

SEC. 4. If the said state highway commission shall, in its discretion, determine to construct any such bridge as in this act provided for, in accordance with the authority herein conferred, the said state highway commission shall ascertain and estimate, as nearly as is practicable, the probable cost of the location and construction of such bridge, including the approaches thereto as a part thereof, and including also in said estimated cost the cost of acquiring all necessary personal and real property and easements in real property, and shall certify the amount of such estimated

cost, together with a copy of its order of resolution expressing its determination to construct such bridge, to the county auditor of that county in Indiana in which such bridge, or any part thereof, considering the approaches thereto as a part thereof, is located; and thereupon such county, by and through its board of county commissioners, by appropriate resolution and order, shall forthwith issue and execute the negotiable bonds of such county, with proper interest coupons attached thereto, in an amount equal to one-fourth of such estimated cost of the location and construction of such bridge: *Provided*, That no county shall issue its bonds under the provisions of, or for any of the purposes contemplated in, this act in any amount in excess of one per centum of the valuation, for purposes of taxation, of the taxable property within such county as such valuation is shown by the last preceding assessment for state and county taxes.

Bonds, Provisions and Conditions of.

SEC. 5. Said bonds shall be issued in denominations of one thousand dollars each, except that one bond may be for less than one thousand dollars, and all shall be made payable to bearer at some designated bank in the State of Indiana and shall bear interest at the rate of five per centum per annum, payable semi-annually: *Provided*, If it shall be clearly apparent that such bonds at a lower rate of interest will sell readily for not less than their par value, such lower rate of interest may be substituted; and said bonds shall be numbered in consecutive, numerical order and shall be so issued as to the maturity dates thereof that one-thirtieth part, as nearly as practicable, of all said bonds shall become due and be payable on the first day of December following the time allowed by law for the collection of the first tax levied for use in paying said bonds and the interest thereon, and a like amount of said bonds shall thereafter become due each year and on the same date each year until all become due and payable. Said bonds shall be issued and otherwise executed as the bonds of such

county, shall be the bonds of and a direct obligation of such county, shall be signed by its board of county commissioners and sealed with the corporate seal of said county and attested by the county auditor of such county; but the lithograph signature of the auditor of such county shall be the only signature required upon the interest coupons attached to said bonds. Such bonds, or any part thereof, shall be subject to call and redemption by such county at any semi-annual interest payment date after the expiration of five years from the date of issue, and from time to time thereafter before maturity, at the par value thereof plus accrued interest, at the election of the board of county commissioners of such county. If said board of county commissioners shall determine to redeem any of said bonds piror to maturity, such bonds shall be redeemed in their numerical order and notice of such election to redeem prior to maturity shall be given by two publications, one each week and on the same day of each week, in two newspapers of general circulation, printed in the English language and published, one at the city of Indianapolis and the other at the county seat of the county by which said bonds were issued, which publications shall be completed at least ten days prior to the interest paying date on which any of said bonds are called for redemption. Said notice shall state the number or numbers of the bonds so called for redemption prior to maturity and otherwise identify and make certain the bonds so to be redeemed, and the bonds so called for redemption shall be redeemed and paid by such county at the time and place designated in such notice. If the bonds so called for redemption are not surrendered or tendered by the holders thereof for redemption at the time and place designated in said notice, such bonds shall not thereafter bear any interest, provided the county has on deposit at the time and place designated sufficient funds to redeem and pay such bonds, together with the accrued interest thereon.

Bonds, Sale of—Disposition of Proceeds.

SEC. 6. When so executed, such bonds shall be sold as now provided by law for the sale of other county bonds, except that, in addition to any other notice required by law, such bonds shall be advertised in a public newspaper of general circulation published at the city of Indianapolis, Indiana; and the proceeds derived from the sale of such bonds shall be forthwith paid over by the county treasurer of such county to the treasurer of state of the State of Indiana, and shall become a part of the state highway funds of said state, to be used in the construction of such bridge and for no other purpose: *Provided,* That if the proceeds derived from the sale of such bonds shall amount to more than one-fourth of the actual cost of the construction of such bridge, the excess of such proceeds over and above one-fourth of the actual cost of the construction of such bridge shall, at the completion of such bridge, be repaid by the treasurer of state of the State of Indiana to such county and shall be used by such county in the payment of such bonds and the interest thereon and for no other purpose: *Provided, further,* That if, for any cause whatsoever, all or any part of said proceeds derived from the sale of any such bonds of such county shall not be actually used in the construction of such bridge, all of said proceeds not so used shall be repaid to such county and shall be used by it in the payment of such bonds and the interest thereon and for no other purpose; and if, at any time, the completion of any such bridge shall be abandoned, or shall be permanently or perpetually enjoined by decree of any court from which no appeal is taken within the time of appeal allowed by law, and thereafter prosecuted with due diligence, or if the completion of such bridge be rendered impracticable by natural causes or otherwise, then in any such event all funds derived from the sale of county bonds hereunder and placed with the treasurer of state, as herein provided, to be used as a part of the state highway funds of the state in the construction of such bridge, and not so used, shall thereupon,

together with any and all depository interest which shall have accrued on such fund while in the possession of the treasurer of state, be returned at once by the treasurer of state to the said county, and shall be used by it in payment of such bonds so issued by it as aforesaid and the interest thereon and for no other purpose.

Tax Levy—Other Funds—Payment of Principal and Interest of Bonds.

SEC. 7. For the purpose of raising money to pay said bonds and interest thereon, as provided in this act, the proper officers of every county issuing bonds under authority of this act, shall as soon as said bonds are sold and annually thereafter at the time the general tax levy is made, levy a tax, in addition to all other taxes authorized by law to be levied by such county, upon the property within said county subject to taxation, in such manner as to meet the principal and interest of said bonds as they become due, and such tax shall be levied and collected as other taxes are levied and collected, and shall be applied to the payment of such bonds and interest: *Provided,* That if any other funds provided by law for the payment of said bonds and interest shall come to the hands of the proper officer of said county and be available for payment on said bonds and interest, the tax in this section provided for may be abated to the extent only that such other funds provided by law may be actually available for payment of such bonds and interest at the time for making any such annual tax levy.

State Highway Funds, Cost of Bridge to be Paid Out of.

SEC. 8. Upon receipt by the treasurer of state of the State of Indiana of the proceeds of the sale of any such county bonds as may be issued hereunder, such proceeds shall become a part of the state highway funds, subject only to the provisions and limitations as to repayment thereof in this act contained, and the said state highway commission shall thereupon construct such bridge and the cost thereof shall be paid out of state highway funds.

Maintenance.

SEC. 9. Such bridge shall be maintained by said state highway commission as other highway bridges are maintained by it, and the cost of such maintenance shall be paid out of the state highway funds, except as herein otherwise provided; but no part of the proceeds of the sale of bonds issued by any county hereunder shall ever be used for such maintenance.

Dedication as Instrument of Interstate Commerce.

SEC. 10. Any and every bridge which may be constructed under the provisions of this act shall be and hereby is dedicated as an instrument of interstate commerce for the equal use of all citizens of the United States and of any other persons who may be entitled to the use thereof.

Tolls for Use—Rates—Supervision, Regulation and Control.

SEC. 11. If and when authority so to do shall be granted and conferred by appropriate legislation by the Congress of the United States, the state highway commission shall charge toll, in accordance with the provisions of this act, for the use of any bridge constructed under the provisions of this act; and said state highway commission shall fix and establish the rates of toll to be paid for the use of such bridge, and for such purpose shall have authority to classify the users of such bridge into reasonable classes and to fix the rates of toll accordingly: *Provided, however,* That such right to charge toll, and also said rates of toll and the classification of the users of such bridge so fixed and established, shall be subject to the approval and control of the proper authorities of the United States, as now or hereafter provided by the acts of congress providing for the supervision or regulation of the taking of tolls over interstate bridges.

Toll Gates and Houses—Collectors, Bonds—Deposit of Tolls.

SEC. 12. Said state highway commission shall erect upon, or adjacent to, any and every such bridge or its approaches, and within the territorial limits of the State of Indiana, all necessary and convenient toll gates and toll collectors' houses, and shall employ all necessary toll collectors who shall each, before entering upon the performance of his duties, execute his bond, payable to the State of Indiana, in the penal sum of one thousand dollars, with surety to the approval of said state highway commission, and conditioned for the faithful performance of his duties as such toll collector and that he will faithfully account for and pay over according to law all moneys that may come to his hands as such toll collector. All tolls collected by said toll collectors shall be deposited daily in some state depository designated by said state highway commission to the credit of the treasurer of state of the State of Indiana as a toll fund to be used and disbursed as provided for in this act.

Collectors of Toll—Appointment, Compensation and Control.

SEC. 13. Such toll collectors shall be selected, employed and paid in the same manner as other employes of such state highway commission are selected, employed and paid: *Provided,* That they shall be paid only out of said toll fund and their wages shall not be a charge upon the general funds of such state highway commission. Said toll collectors shall be subject to the complete control of said state highway commission and to such regulations as it may prescribe governing their duties.

Collectors of Toll—Police Powers.

SEC. 14. Every toll collector shall, by virtue of his employment, and while in the discharge of his duties, have full and complete police power, and shall be authorized to make

arrests without a warrant for any violation in Indiana of the criminal laws of the State of Indiana, occurring in his presence.

Toll, Failure to Pay or Collect—Penalty.

SEC. 15. It shall be unlawful for any person to pass or attempt to pass by any toll gate established by said state highway commission in accordance with the provisions of this act without the payment of the proper toll as prescribed by said state highway commission; and it shall likewise be unlawful for any toll collector to wilfully permit any person to pass such toll gate without the payment of such toll; and any violation of this section of this act shall be punishable by a fine of not to exceed fifty dollars, to which may be added imprisonment in the county jail for not to exceed thirty days.

Use—Rules and Regulations, Posting.

SEC. 16. Said state highway commission shall have the right to make all reasonable rules and regulations governing the use of such bridge which are consistent with the provisions of this act and with the laws of the State of Indiana, and with the laws of such adjoining state, and with any laws or regulations of the United States, applicable to the use of such bridges. It shall be the duty of said state highway commission to cause to be placed in full view, in legible and large letters, upon or in each of the toll houses established by it upon said bridge or its approaches all such rules and regulations adopted by it in accordance with the provisions of this act, and also the toll rates adopted for the use of such bridge.

Toll Fund—Order, Purposes, Division and Manner of Application.

SEC. 17. The moneys derived from tolls taken for the use of such bridge shall be applied first to the payment of the expense of collecting such tolls. The net amount of such toll fund remaining after the payment of the expense of

collecting such tolls shall be divided equally between the State of Indiana and the county in said state which has issued bonds in aid of the bridge from which the tolls were derived until each of said state and said county has received back an amount equal to the amount contributed by the county to the said bridge, together with interest thereon up to the time of repayment; and such net toll shall be used for no other purpose. Payment of such net toll shall be made semi-annually, and it is hereby made the duty of the officer having custody of such net tolls to pay to such county its share thereof ascertained as aforesaid, and to the State of Indiana its share thereof ascertained as aforesaid, and all amounts so paid to such county shall be used by such county, when so received, in payment of its said bonds and interest so long as any of said bonds and interest remain outstanding and unpaid. All depository interest accruing on such fund, shall be added to and shall constitute a part of such fund.

Free Bridge, When Declared to Be.

SEC. 18. Whenever such county, either from moneys derived from net tolls as aforesaid or from moneys paid by an adjoining state, or from both of such sources, shall have been repaid an amount equal to the amount of money contributed by such county to said state highway funds in aid of the construction of such bridge, including principal and interest, and when the state highway fund, either from money derived from net tolls as aforesaid, or from money paid by an adjoining state, or from both sources, shall have been paid an amount equal to the amount contributed by such county in aid of the construction of such bridge, plus interest thereon to the time of such repayment, then the right to take tolls on such bridge shall immediately cease and such bridge shall thereupon be declared to be and shall be a free bridge for use in interstate commerce between the State of Indiana and such adjoining state. In no event, however, shall tolls be collected for a longer period of time than is permitted by any law of congress now in force or

hereafter enacted regulating the collection of tolls on interstate bridges.

Interstate Contracts—Payment of Part of Cost by Adjoining State.

SEC. 19. In the discharge of its duties under the provisions of this act said state highway commission of Indiana, as the agent and representative of the State of Indiana and in the name of the State of Indiana, is hereby authorized and empowered, both before and during the construction of any such bridge and after the completion thereof, to co-operate with and enter into a contract or contracts with such adjoining state, acting through any proper authorities or agents representing such adjoining state, to provide for the payment by such adjoining state of such part of the costs of the construction of such bridge, not exceeding one-half thereof, as may be agreed upon in such contract; and in such contract to also agree upon and determine the time and manner of the making by such adjoining state of such payment or payments and all other details in connection therewith: *Provided*, That any moneys paid to the State of Indiana by any such adjoining state as such adjoining state's agreed part of the cost of construction of any such bridge shall be applied by said State of Indiana to reimburse the State of Indiana and any county of the State of Indiana that shall have issued its bonds under the provisions of this act to aid in the construction of such bridge up to the amount in each case which is equal to the amount provided by said county for such purpose, plus interest thereon up to the time of repayment thereof, so far as the money so provided was actually used in and about the construction of such bridge; and all moneys so received and applied to reimburse any such county as aforesaid shall be first applied by said county in payment of any of its said bonds issued as aforesaid under the provisions of this act and which are then still outstanding and unpaid, until such bonds and the interest accrued thereon shall be paid in full.

Certificate as to Contribution—Transfer of Title to Interest in Part of Bridge.

SEC. 20. Upon the payment by any such adjoining state of any part of the cost of the construction of such bridge said state highway commission is hereby authorized and directed to issue, in the name of the State of Indiana, to such adjoining state, a proper certificate or instrument of transfer or acknowledgement evidencing the amount contributed by such adjoining state and transferring to it title to a corresponding interest in such bridge, and thereafter the title to such bridge shall be deemed to be vested jointly in the State of Indiana and the adjoining state so contributing to the cost of said bridge, and the interest of each thereof shall be deemed to be in proportion to the respective contributions so made by each one respectively.

Interstate Contract as to Maintenance.

SEC. 21. Said state highway commission is hereby expressly authorized and empowered to negotiate and contract with the proper authorities of such adjoining state in respect to the maintenance of any such bridge.

Act Supplemental to Certain Other Acts.

SEC. 22. This act shall at all times be construed as supplemental to and in aid of all other acts providing for the construction of highways and bridges.

Appropriation and Authorization.

SEC. 23. No appropriation of money or authorization of any bonds contemplated in this act by the county council shall be required.

County—Right to Proceed Exclusively Under this Act in Certain Cases.

SEC. 24. That, except as hereinbefore otherwise expressly provided, any county shall have the right to proceed under this act without complying with any other existing act.

Assumption of County Debt—Inhibition.

SEC. 25. Nothing contained in this act shall be so construed as to authorize the state or the state highway commission to assume any debt or obligation of any county which may aid or assist in the construction of any bridge contemplated herein.

Amendment and Modification—Right Reserved by General Assembly.

SEC. 26. The general assembly hereby reserves the right to amend or modify this act at any time that such amendment or modification may be deemed just and proper.

Repeal.

SEC. 27. An act entitled "An act authorizing the state highway commission to construct and maintain a bridge across and over any river or other stream forming the boundary line between the State of Indiana and any adjoining state, wherever such bridge, including its approaches as a part thereof will directly connect any state or interstate highway now in existence or hereafter constructed and situate in the State of Indiana with any interstate or other public highway now in existence or hereafter constructed and situate in any such adjoining state; authorizing the state highway commission to enter into contracts and to provide for the construction of any such bridge in a location wholly or in part within the boundaries of such adjoining state; providing for the maintenance of bridges constructed hereunder; and, where any such state or interstate highway in the State of Indiana with which any such bridge connects as aforesaid is situate, or will be situate, wholly or in part within the boundaries of a county of the State of Indiana, bordering on any such river or other stream, and such county has within its boundaries a city having population of eighty thousand or more, according to the last preceding United States census, requiring such county to separately provide funds to pay one-fourth of the cost of

the construction of such bridge and to issue bonds therefor and to levy a tax to pay such bonds''; approved February 25, 1925, (the same being chapter 25 of the Session Acts of 1925), be and the same is hereby expressly repealed, and all other laws and parts of laws in conflict herewith are hereby repealed.

EXHIBIT B.

[Chapter 53, Acts of the General Assembly of Indiana of 1919, p. 119.]

I. State Highway Law.

State Highway Commission—Districts—Compensation—Seal.

Section 1. That there is hereby created a state highway commission which shall consist of four (4) members who shall be appointed by the governor, and not more than two (2) of whom shall be adherents of the same political party. Upon taking effect of this act, the governor shall appoint four (4) members of the highway commission; one (1) of whom shall be designated to hold office for one (1) year, one (1) for two (2) years, one (1) for three (3) years, and one (1) for four years, and no more than one of whom shall be from any one the following districts, to wit: First district, consisting of the first, second and third congressional districts; second district, consisting of the fourth, fifth, sixth and seventh congressional districts; third district, consisting of the eighth, ninth and eleventh congressional districts; fourth district, consisting of the tenth, twelfth and thirteenth congressional districts. Thereafter, the governor shall appoint a successor to hold office for the term of four (4) years, and until his successor has been appointed and qualified: Provided, however, That no person shall be appointed or serve on said commission as a commissioner who is engaged directly or indirectly in the

sale, manufacture or the handling of any material used in the construction, repair or maintenance of highways under this act. The governor shall fill any vacancy in the membership of the commission and may remove any member of the commission after a hearing for cause. The commission shall meet at least once a month on the call of the director and each member of the commission shall receive as compensation for his services, the sum of ten dollars ($10) per day for the days actually and necessarily spent on duty, and shall also receive his actual and necessary traveling and other expenses incurred in the performance of his duties. The state highway commission shall have a seal, and the members of the state highway commission and the director shall have the power to administer oaths.

Appointment of Director—Bond.

SEC. 2. The state highway commission shall appoint a director who shall be chosen solely for fitness, irrespective of political beliefs or affiliations and he may be removed by a majority vote of the commission for inefficiency, malfeasance or neglect of duty, after notice and hearing by the commission. The director shall be the executive officer of the commission and shall be subject to the orders and direction of the commission. The director shall give his whole time to the duties of his office. Before entering upon the duties of his office the director shall give bond to the State of Indiana in the sum of twenty-five thousand ($25,000.00) dollars, to the approval of the State highway commission, conditioned upon the faithful performance of his duties. Said bond when approved by the commission shall be filed with the secretary of state. The director shall have power with the approval of the commission, to appoint and remove for cause, chiefs of divisions, and, upon the recommendation of the chief of any division, to appoint and remove all assistants and employees thereof.

Duty of Director—Rules and Regulations.

SEC. 3. The director shall have the supervision of the work of the state highway commission and of each of its divisions, under the direction of the state highway commission. He shall have control of all employees of the state highway commission charged with carrying out the provisions of this act, or the rules and regulations which may be enacted by the commission, and may assign such employees to any of the divisions of the state highway commission and reassign them at his discretion.

Employees—Compensation—Removal.

SEC. 4. All employees shall be appointed for merit only, and shall be required to pass such examination as may be prescribed by the state highway commission. Any undue political party activity on the part of any employee, or inefficiency or neglect of duty shall subject such employee to removal, but no employee, except temporary employees, shall be removed except for cause.

The state highway commission shall, subject to the approval of the governor, fix the compensation of the director, and of all clerks, engineers, draftsmen and other employees and assistants, and may require any employee to give bond to the State of Indiana for the faithful performance of his duties, in such amount as may be fixed by the commission. All employees shall receive their actual and necessary traveling and other expenses incurred in the performance of their duties under this act.

Organization of Commission—Quorum—Rules—Penalties.

SEC. 5. Immediately upon taking effect of this act and the appointment of the state highway commission and annually thereafter, the commission shall meet and organize by the election of one of its members as chairman who shall hold the office for one (1) year. The director appointed shall act as secretary of the state highway commission and shall keep a record of all of the proceedings of

the commission. Three (3) members shall constitute a quorum to do business. The commission shall have power to make rules and regulations for the conduct of its meetings, and for the conduct of the work of the commission and its several divisions. The commission may make rules and regulations authorized by this act and such other as may be necessary in their judgment to carry out the provisions of this act or to preserve the highways while under construction and protect from harm the passengers traveling thereon, not inconsistent with this act and the laws of the state, and such rules and regulations shall bear the seal of the commission and shall be attested by the director, and when approved by the governor and advertised in some daily paper of general circulation for ten (10) days, and copy filed with the county auditor whose duty it shall be to advertise same in some local paper for at least two publications, the same shall have the force and effect of law, and any person, firm or corporation who shall wilfully violate any of the provisions of such rules or regulations shall be subject to a fine of not less than ten ($10.00) dollars nor more than fifty ($50.00) dollars for each offense.

Annual Report.

SEC. 6. The state highway commission shall upon or before the first day of December of each year, present to the governor a report of the commission which shall contain, in addition to such information and recommendations as the commission shall see fit to include, reports of the director and of the chiefs of the several divisions of the commission. The report or such part or parts thereof as the commission may deem to be of the most general importance may be published with the consent of the governor, and the expense thereof paid out of the appropriation for the board of public printing, binding and stationery. The commission shall likewise prepare and submit a condensed annual report of the work of the commission and the several divisions thereof, in such form as the governor may prescribe to be incorporated in the Indiana year book.

Divisions—Construction—Maintenance—Auditing.

SEC. 7. The state highway commission shall consist of the following divisions:

1. Division of construction.
2. Division of maintenance.
3. Division of auditing.

The chief of the division of construction shall be known and designated as chief engineer, the chief of the division of maintenance shall be known and designated as superintendent of maintenance, the chief of the division of auditing shall be known and designated as chief clerk.

Divisions other than those hereinbefore enumerated may be created from time to time by the director, with the approval of the commission as it may be desirable and necessary to differentiate the work of the commission and to promote efficiency in the execution of this act. But in the creation of such divisions the director or commission shall have no authority to exercise any powers and duties not conferred by this act.

Duty of Chief of Division—Reports.

SEC. 8. The chief of each division under direction of the director shall have supervision and management of the work of the division of which he is chief, and shall be responsible for the work of his division. On or before the fifteenth day of November of each year he shall make a complete report to the director of his activities during the preceding year, and he shall make such additional reports from time to time as the director may require.

Recommendations—Bulletins.

SEC. 9. The state highway commission shall have power to investigate, compile and disseminate information and make recommendations concerning road construction, road maintenance and the natural resources of road building material of the state. The commission may in its discretion cause to be prepared such literature and information

relating to matters within the field of work of the commission or any division thereof, as they shall deem suitable and worthy of publication, and shall disseminate the same through the public press or otherwise. The same may be published and distributed in bulletin form by the commission and the same be paid for out of the state highway fund.

Offices—Records.

SEC. 10. The state highway commission shall be provided with suitable offices in the city of Indianapolis, Indiana, by the "superintendent of public buildings and property."

Said offices shall be kept open at such times as the business of the commission and the convenience and interest of the public shall require. Such office shall be the repository for all the records of the state highway commission, and shall be furnished by the state with all necessary stationery, office supplies, fixtures, apparatus, and engineering instruments.

Chief Engineer—Superintendent of Maintenance—Chief Clerk.

SEC. 11. As soon as practicable after the appointment of a director, he shall appoint with the approval of the commission, the chief of the division of construction, known and designated in this act as "chief engineer," who shall be a competent civil engineer, experienced and skilled in highway and bridge construction and improvements; a chief of the division of maintenance, known and designated in this act as "superintendent of maintenance," who shall be a competent civil engineer, experienced and skilled in highway and bridge maintenance and repair; a chief of the division of auditing, known and designated in this act as "chief clerk." The chief engineer acting under the direction of the director shall have supervision of all matters pertaining to highway and bridge construction and improvement as provided in this act. The superintendent of maintenance acting under the direction of the director shall have

supervision of all matters pertaining to highway and bridge maintenance and repair. The chief clerk acting under the direction of the director shall have supervision of the keeping of accounts of the state highway commission. The chief engineer, the superintendent of maintenance and the chief clerk shall perform such other duties as may be prescribed by the state highway commission and by the director. Each appointee shall receive his actual traveling and other necessary expenses incurred in the performance of his duties and such salary as may be fixed by the highway commission, with the approval of the governor. Each appointee may be required to give such bond as may be fixed by the commission.

System of State Highways—Main Market Highways—Act of 1917.

SEC. 12. The state highway commission shall at the earliest possible moment proceed to lay out a system of state highways which shall reach each and every county seat of the state and each and every city or town of over 5,000 inhabitants; and for the connection of county seats, and cities of over 5,000 inhabitants with improved trunk highways of adjoining states and connecting with said trunk highways from other states, whereby said trunk highways of other states and the connecting highways of this state become continuous improved highways. All highways heretofore designated as main market highways by the state highway commission, acting under an act entitled "An act creating a state highway commission providing for the construction, reconstruction, maintenance, repair and control of public highways and providing for co-operation with the federal government in the construction of rural post roads," approved March 7, 1917, shall be state highways within the meaning of this act and shall be improved and maintained as state highways under this act the same as if designated as state highways under this act. When any part or all of said system shall have been laid out by the state highway

commission and shall have been approved by the governor and shall have been filed in the office of the state highway commission, highways of said system shall become and be known under this act as state highways and from that time shall be constructed, reconstructed, repaired and maintained by the state highway commission out of the state highway funds. A state highway within the meaning of this act is a public highway selected and designated under the provisions of this act for construction, repair or maintenance by the state highway commission out of the funds created by this act. The state highway commission shall have laid out a sufficient mileage of state highways by April 1, 1920, to reach each and every county seat of the state. The same shall be approved by the governor and filed in the office of the state highway commission by April 1st, 1920.

Profiles, Plans and Specifications—Tools and Implements.

SEC. 13. The director shall as soon as any part or all of this highway system is laid out cause to be organized the division of maintenance for the purpose of maintaining the state highways in the best condition possible. He shall also cause to be prepared by the chief engineer and his division, profiles, plans and specifications and estimates for the construction of the state highways as rapidly as funds appropriated will suffice to construct the same. The state highway commission is hereby authorized to construct:

First, That part of the system of state highways the state highway commission deems to be for the best interest of the State of Indiana. The director is hereby authorized under the direction of and in conformity to the orders of the commission to purchase, hire or rent whatever tools, implements, or materials may be necessary for the proper maintenance, repair and construction of the system of state highways. Provided, That all purchase of tools, implements and materials shall be made pursuant to a system of competitive bids and contracts, whereby all manufacturers or dealers in such tools, implements and materials shall have

an equal opportunity to submit bids, and the contract for such tools, implements and materials shall be let to the lowest and best bidder. Such work may be done by contract or in any other manner deemed by the state highway commission most efficient and economical to the state.

Approval of Bills, Vouchers and Contracts.

SEC. 14. Under the authority of the state highway commission and in conformity to its orders the directors shall approve all bids, sign all vouchers, issue all orders for supplies and materials, sign all contracts and agreements in the name of the State of Indiana, and shall subscribe to all other matters which may arise in the carrying out of the interest and purpose of this act.

Purdue Laboratory.

SEC. 15. The testing laboratory of Purdue University shall be available to the state highway commission for the testing of materials to be used in the construction or maintenance or repair of state highways.

Drains—Culverts—Bridges.

SEC. 16. All drains, culverts and bridges on any state highways shall be considered as part of a state highway. But, all bridges having a span over twenty (20) feet in length shall be let as a separate contract, the procedure to be the same as in the letting of contracts for roadways. (As amended by Acts 1921, p. 151.)

Standard Specifications—Notice—Bids.

SEC. 17. The chief engineer, as soon after appointment as is practicable and before any work is ordered, shall prepare and place on file in the office of the commission, standard specifications for three or more distinct types of modern highways of which at least three shall be hard surface types, to be designated by the commission as the types of highways for which bids will be received for the construction of state highways or any part thereof. Provided, That

said specifications may be amended from time to time, or new specifications substituted therefor. When any part of said state highway is ordered to be constructed it shall be the duty of the director to advertise for bids, and the director shall give notice by publication for two (2) consecutive weeks in two (2) newspapers representing the parties casting the highest and next highest vote in the state, of general circulation throughout the state, and in two newspapers representing the parties casting the highest and next highest vote in the county of general circulation in the county where the work is being performed, that on a date to be named by the said director, in such notice, sealed proposals will be received by the director at the office of the state highway commission, or other designated place, for the construction, improvement or maintenance of such road in accordance with profile, plans and specifications which have been adopted, and which are on file in the office of the state highway commission, and when such order provides for the construction of said highways, or any part thereof, said notice shall state that bids will be received for three or more of the distinct types of highways for which specifications have been adopted as heretofore provided. If there should be more than one state highway, the notice shall relate to all. Each notice shall be published at least ten (10) days before the date named therein as the date for receiving sealed proposals. If the director deems it advisable, he may require the notice to be published in other papers.

Sealed Proposals—Form of Bond—Labor and Material Accounts.

SEC. 18. On the date and at the time and place named in the notice, the director shall receive all sealed proposals rendered and shall open the same. Said director with the approval of the commission shall have the right to reject any and all bids if any cause exists therefor; otherwise the contract for construction, improvement or maintenance of

such road shall be let by the director, with the approval of the commission to the lowest and best bidder; providing that said bill shall not be for a greater sum than the chief engineer's estimate cost thereof. If in the opinion of the commission no satisfactory bid has been received, the director shall be given authority by the commission to purchase the necessary material and equipment, and to employ the necessary labor and perform the work of constructing such highway or highways, provided, that in no case shall the director be given by the commission the authority in such construction to expend more than eighty-five per cent (85%) of the amount of the lowest and best bid submitted for the kind of improvement proposed to be made, and it shall be the duty of the commission to adopt rules governing the purchase of material and equipment to such an extent that complete competition shall be insured. Each bidder with his proposal shall submit his bond payable to the State of Indiana in the penal sum of one and one-half times the amount of his proposal with good and sufficient sureties to the approval of the director, conditioned upon the faithful performance of the work in accordance with the profile plans and specifications therein set forth, and conditioned also upon the payment by the contractor and by all sub-contractors for all labor performed or materials furnished in the construction of the highway. Said bond shall be executed by such contractor with such sureties as will be approved by the director, in an amount equal to at least one and one-half times the contract price, and conditioned for the payment by the contractor and by all subcontractors of all indebtedness which may accrue to any person, firm or corporation on account of any labor performed or materials furnished in the construction of such highway. Such bond shall be deposited with and held by the director for the use of any party interested therein.

Any person, firm or corporation to whom any money shall be due on account of having performed any labor or furnished any material in the construction of such high-

ways, within one (1) year after the acceptance thereof by the duly authorized board of officers, shall furnish the sureties on said bond a statement of the amount due to any such person, firm or corporation. No suit shall be brought against the sureties on said bond until the expiration of sixty (60) days after the furnishing of said statement. If said indebtedness shall not be paid in full at the expiration of said sixty (60) days, said person, firm or corporation may bring an action in his own name upon such bond, said action to be commenced within one (1) year from the date of acceptance of said highway.

The bond hereinbefore provided shall be in the following form, and recovery of any claimant thereunder shall be subject to the conditions and provisions of this act to the same extent as if such conditions and provisions were fully incorporated in said bond form:

Know all men by these presents that we, the undersigned .....as principal and..... as surety, are hereby held and firmly bound unto the State of Indiana in the penal sum of ..... dollars, for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns:

Dated this.....day of.....19...

The condition of the above obligation is such that whereas the above named.....did on the.....day of.....19... enter into a contract with the State of Indiana, which said contract is made a part of this bond the same as though set forth herein.

Now, if the said.....shall well and faithfully do and perform the things agreed by..... .....to be done and performed according to the terms of said contract, and shall pay all lawful claims of sub-contractors, material men and laborers, for labor performed and materials furnished in the carrying forward, performing and completing of said contract, we agreeing

and assenting that this undertaking shall be for the benefit of any material men or laborer having a just claim, as well as for the obligee herein, then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal sum of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions or additions in or to the terms of the said contract or in or to the plans or specifications therefor shall in any wise affect the obligation of said sureties on its bond.

Partial Payments.

SEC. 19. The director may authorize partial payments to any contractor performing any work under the provisions of this act as the same progresses under general rules of the commission. On new construction work there shall not be paid to exceed ninety per cent (90%) of the chief engineer's estimated cost of the completed work: Provided, That after complete inspection has been made and it is determined that the work has been done according to plans and specifications the director may approve and accept completed work in sections of not less than one (1) mile and pay the contractor therefor: Provided, further, That full payment shall not be made on any parts of said work completed and accepted unless the contractor shall have filed a bond to the satisfaction of said director guaranteeing that the work so completed and accepted has been done according to pans [plans] and specifications and that said work shall be in good condition at the time of the final completion and acceptance of the whole of said work contracted for. (Amended by Acts 1921, p. 469.)

Contract—Approval.

SEC. 20. Every contract for highway work authorized to be made under the provisions of this act shall be made in

the name of the State of Indiana and signed by the director, when authorized and ordered so to do by the state highway commission, and the contracting parties, and shall be acknowledged before an officer authorized by law to administer oaths, and the same shall be approved by the attorney-general as to legality and form.

Abandonment of Contract—Suit.

SEC. 21. Any time a contractor fails to commence or carry forward or is improperly performing, or has abandoned or fails or refuses to complete a contract executed under the provisions of this act, the state highway commission, through the director, may relet the work or may complete the same under his direction and in either case the director shall deduct the cost and expense from any money that may be due the contractor and in case there is not sufficient money due the contractor to pay for said work, the director shall require the bondsmen to pay for it. It shall be the duty of the attorney-general to prosecute suit in the name of the State of Indiana for the collection of the same from such contractor or his bondsmen.

Highways Connecting with Unimproved Streets.

SEC. 22. If any state highway connects at the corporate limits of any city or any town having a population of more than twenty-five hundred, as shown by the last proceeding [preceding] United States census, with an unimproved street of such city or town, the state highway commission may in its discretion, improve the same as a part of such state highway; and if any state highway connects at the corporate limits of any town having a population of not to exceed twenty-five hundred, as shown by the last preceding United States census, with an unimproved street of such town, the state highway commission shall select, mark and maintain such street until such time as it may improve the same as a part of such state highway and after such street shall have been improved as a part of a state highway, such street shall thereafter be maintained as a part of such state

highway; and if any state highway connects at the corporate limits of any town having a population of not to exceed twenty-five hundred, as shown by the last preceding United States census, with an improved street of such town, the state highway commission shall select, mark and maintain the same as a part of such state highway.

If a street of any incorporated city or town is improved under the provisions of this act and the expense per mile of such improvement is greater than the average expense of improvement of such road outside of the corporate limits of the city or town, then and in that event, the extra expense shall be paid by the city or town, to the state highway fund. The common councils or boards of trustee of such city or town shall levy a tax upon the whole property of the city or town, at such rates as will be sufficient to produce an amount equal to seventy-five per cent of the extra expense to be paid by such city or town, and twenty-five per cent of such extra expense shall be assessed as benefits against the abutting property, in the manner provided by law for such assessments, to pay the amount due to the state for such improvement. The provisions of this act shall be construed in conformity to and in compliance with the provisions of the federal act which extends federal aid to the state for the construction of highways in municipalities having a population of not to exceed twenty-five hundred, as shown by the last preceding United States census, except that portion of any such highway or street, along which, within a distance of one mile, the houses average more than two hundred feet apart. (As amended by Acts 1923, p. 246.)

Relocation of Highways.

SEC. 23. The line or actual location of a state highway may deviate from the location of the public highway as actually traveled at the time said public highway was under this act designated as a state highway as may be deemed expedient by the state highway commission in order to shorten distance, to eliminate steep grades or sharp turns, to widen narrow portions or otherwise to promote public

convenience and safety. Such portion of a public highway as may be abandoned because of the changes herein described shall no longer be considered as a public highway or a portion of a state highway, but shall be abandoned as a state highway and as a public highway, unless a petition of the board of county commissioners of the county in which such abandonment section may be located, to the state highway commission, that the board of county commissioners desires to maintain such portions of the public highways, in which case it will be maintained as other public roads as provided by law.

Right of Eminent Domain.

SEC. 24. The state highway commission is hereby given the right in the name of the State of Indiana to purchase, or by voluntary grants and donations receive or otherwise acquire, lands and rights necessary for the construction, repair and maintenance of any state highway, and necessary for the relocating, widening or straightening of any state highway, or necessary for the clearing and removing of obstructions to the vision at highway crossings and curves, or for any other purpose or use contemplated by this act. The state highway commission is hereby endowed with the right of eminent domain in so far as the same may be necessary or proper for the carrying out of the provisions of this act. If the state highway commission shall be unable to agree with the owner of the land or right, or with the guardian of such owner, touching the damages sustained by such owner, or touching the purchase price of the land or right, the state highway commission may proceed in the name of the State of Indiana in the exercise of the right of eminent domain with which it is under this act endowed to condemn the land or right necessary or proper for the carrying out the provisions of this act under the laws of the state. Whenever the state highway commission shall deem it necessary to acquire any real estate or right for any purpose contemplated in this act, it may adopt an appro-

priate resolution setting forth the description of the real estate or right sought to be acquired by it, the purpose for which the real estate is to be used, and such other facts as the state highway commission may deem necessary or pertinent, and shall refer such resolution to the attorney-general. Thereupon the attorney-general shall commence an action in the name of the State of Indiana in the proper court for the condemnation of the real estate or right described in said resolution and shall take all necessary and proper steps to secure the condemnation of the real estate or right. Any employee of the state highway commission engaged in the execution of any survey authorized by the commission, or by the director, or by the chief engineer, or by the superintendent of maintenance, may enter upon any lands or waters within this state for the purpose of inspecting, leveling, or doing any work deemed necessary to carry out any of the provisions of this act: Provided, That by such entry and in the doing of such work no injury is done to the real estate or waters entered upon, and no damages result from such entry or work.

Railroad Crossings—Separation of Grades—Expenses.

SEC. 25. Whenever a state highway is being constructed or reconstructed and such highway crosses or intersects any steam railroad or electric railroad without the limits of any incorporated city or town the state highway commission may if in its opinion it is practicable, separate grades at such crossings, and if unable to agree with such railroad or electric railroad as to such separation and the method of accomplishing the same, apply to the public service commission by verified petition asking that the grades be separated at such crossing. Upon the filing of such petition, the public service commission shall have and exercise all of the powers and authority conferred upon it by an act of the general assembly of the State of Indiana, entitled "An act to provide for the better protection of travelers on the highway crossing of railroads and street railroads, interurban

street railroads, or suburban street railroads in this state, by separation of the grades thereof, and improvements of such crossings, and granting powers to the railroad commission of Indiana with reference thereto," approved March 11, 1913; and the acts amendatory thereof or supplemental thereto, and any railroads, interurban street railroad, or suburban street railroad, whose tracks are involved in any such crossing shall have all the rights conferred by and be subject to all the duties imposed by said act above mentioned. When any separation of grades is made either by agreement, or by order, the state highway commission shall pay one-half (½) of the total expense of such separation and treat the same as a part of the cost of such highway, the other one-half (½) to be paid by the railroad, interurban street railroad, or suburban street railroad whose tracks are involved in such separation. In cases where two or more railroads, interurban street railroads, or suburban street railroads are located in such proximity to each other as to be involved in any single separation of grades, then in such case the half of such cost not paid by the state highway commission shall be by the public service commission of Indiana, apportioned between such railroads, interurban street railroads or suburban street railroads as the case may be, in proportion as the cost of such separation has been enhanced by the presence of the respective railroads, interurban street railroad or suburban street railroad. After the construction of any such separation the state highway commission shall maintain the highway and the structures supporting it and the railroad or electric railroad shall maintain its roadway and track and the structures supporting the same.

Improvement of Highway Occupied by Railroad Tracks.

SEC. 26. In all cases where the track or tracks of any steam, electric interurban or street railroad company occupies any part of any highways which is ordered improved and maintained by the state highway commission under

the provisions of this act, such railroad company shall improve and maintain, or pay for the cost of improving that portion of the highway occupied by its tracks, including the space between the rails, the space between the tracks, if there be more than one track, and the space eighteen (18) inches in width on the outside of the rails, but in all cases where practicable, such improvement to the full width thereof shall be constructed outside the area occupied by such tracks and where not practicable to do so then the highway commission shall have the power to remove such tracks to that part of such highway outside the area to be so improved. Whenever such highway improvement is made so as to embrace within its limits the tracks of any railroad, interurban, suburban or street railroad then such improvement shall be made of sufficient width to give as much room for general travel on the side or sides and outside of such tracks as is given in places where there are no such tracks within such improvement. Any such railroad may elect, by written notice thereof filed with the state highway commission not less than twenty (20) days prior to the date on which the contract for the improvement of such highway shall be let, to improve the portion of such highway occupied by its tracks or to pay for the improvement thereof as done by the state highway commission. If the railroad company shall elect to improve the portion of the highway occupied by its tracks, it shall perform the work of improving such portion of such highway with such material and in such manner and according to such plans and specifications as the state highway commission may prescribe and shall commence, proceed with and complete the work within a time to be fixed by the state highway commission and for failure so to do shall be subject to a fine of not to exceed fifty ($50.00) dollars per day for each and every day that such improvement is not commenced or completed and after the date named by the commission. If the railroad company shall elect to pay for the improvement as done by the state highway commission, any sums so assessed by the commis-

sion to cover the cost of such improvement together with all the cost in collecting the same, including attorney's fees, to be fixed by the court and taxed as costs in the action brought to enforce payment, shall, from the date of filing a statement of such assessment, attested by the director of the state highway commission, in the office of the county recorder of the county in which such improvement was made, constitute a lien, to which only the lien of the state for state, county, township and school taxes shall be paramount.

Permit of Director to Tear Up Highway.

SEC. 27. No state highway shall be torn up or otherwise disturbed for any purpose without the written consent or permit of the state highway director, and then only in accordance with the regulations prescribed by said commission: Provided, That highways shall not be torn up for any purpose without consent of director; and all such work shall be done under the supervision of the state highway director, and all the cost of replacing the highway in as good condition as previous to its being disturbed shall be paid by the person to whom or in whose behalf such permit was given, or by the person by whom the work was done.

Construction and Repair of Approaches.

SEC. 28. The construction of public approaches and the drainage necessary for the protection of a state highway shall be included as a part of the improvement of said highway. Upon the completion of the highway, the owners or occupants of adjoining lands shall construct and keep in repair all private approaches or driveways from such highways, but no such approaches or driveways shall be constructed in such manner as to obstruct or interfere with the highways or with any drain or ditch which has been constructed as a part of the highway. Whoever fills up or places any material in a ditch along a state highway so as to interfere with the drainage or purposes of its construc-

tion, or construct an approach or driveway from a state highway, except as provided by law, shall be fined not less than five ($5.00) dollars, nor more than twenty-five ($25.00) dollars, to be recovered by civil action in the name of the State of Indiana.

Advance Payments.

SEC. 29. That whenever in the judgment of the state board of finance and on proper showing of facts by the director of the state highway commission, it may be deemed expedient or necessary in conducting and advancing the work of the state highway commission, the state board of finance may authorize advance payments to the director of the state highway commission of such sums of money out of the state highway fund as may be required to provide for the payment of labor, material or other expenses, where an emergency exists for an immediate payment. Such advanced payments shall be made by warrant of the auditor of state, properly itemized and receipted by the director of the state highway commission.

Prison Labor.

SEC. 30. The state highway commission with the approval of the governor may enter into agreement with the authorities of any of the penal institutions of the state, county or city for the use of prison labor in the preparation and manufacturing of road materials.

Funds—Sources—Unexpended Balances.

SEC. 31. In order to provide funds for the carrying out of the provisions of this act there is hereby created a state highway fund from the following sources:

(a) All money now in, or belonging to the state highway fund.

(b) Amended by Sec. 8, Chapter 186, Acts 1923.

(c) Any and all money paid into the state treasury to reimburse the state for money paid out of the state highway fund.

(d) Any and all money provided by law of this state for the construction, maintenance, reconstruction, repair and control of public highways under this act.

(e) Any and all money paid into the state treasury for the year 1920 and all succeeding years collected as motor vehicle registration and re-registration fees, and as fees for the examining and licensing of chauffeurs, under any and all laws of the State of Indiana.

(g) Any and all sums that may at any time be appropriated from any money in the state treasury.

(h) Any portion of the state highway fund unexpended at the expiration of any fiscal year shall remain in said fund with any interest thereon, and be available for the succeeding years. All expenses incurred in carrying out the provisions of this act shall be paid out of the state highway fund.

Submission of Plans to Commission for Approval—Petition.

SEC. 33. When it is proposed to improve any road, the cost of which improvement is estimated to be more than two thousand ($2,000.00) dollars per mile, or to construct or repair any bridge, the cost of which is estimated to be more than two thousand ($2,000.00) dollars, if a petition is filed, signed by fifty (50) or more freehold electors of the district to be assessed or taxed for the construction thereof, with the board of commissioners asking that the plans and specifications therefor be submitted to the state highway commission, then said board shall submit said plans and specifications to said commission and shall not award any contract for the construction of said improvements or bridges until said plans and specifications, or amended plans and specifications have been approved by said commission. Should the petitioners further ask or should a petition be filed signed by fifty (50) or more freehold electors of the district to be assessed or taxed for the construction thereof, asking that the board of commissioners request the state highway director to assign a representative of the state

highway commission to inspect the work of construction as it progresses, then said board shall make such request and it shall be illegal for said board to approve or order paid any claim in payment for the construction of said improvement or bridge unless said representative shall have certified that the materials furnished or work done for which payment is claimed is in accordance with the plans and specifications therefor. Upon the completion of the contract the state highway commission shall submit a claim to said board of commissioners in any amount equal to that incurred by said commission for said inspection services and said board shall allow said claim and the amount so allowed shall be paid into the state highway fund. The chief engineer shall pass promptly upon all plans and specifications and provide inspectors when requested, under the provisions of this section.

Co-operation with Purdue University Engineering School.

SEC. 33½. The state highway commission through its maintenance division is hereby authorized to co-operate with and assist Purdue University Engineering school and the several counties of the state in developing the best methods of improving and maintaining the highways of the respective counties. For the purpose of disseminating knowledge of highway maintenance methods best suited to various section of the state, the county, township and state road officials may hold joint road meetings in these various sections. (Acts 1921, p. 469.)

Federal Appropriations.

SEC. 34. Assent is hereby given to the provisions of the act of congress, approved July 11, 1916, entitled "An act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes."

The state highway commission is hereby authorized to enter into all contracts and agreements with the United States government relating to the construction and mainte-

nance of rural post roads under the provisions of the said act of congress, to submit such schemes of program of construction and maintenance as may be required by the secretary of agriculture and do all other things necessary fully to carry out the co-operation contemplated and provided for by the said act. The good faith of the state is hereby pledged to make available funds sufficient to equal the sum appointed to this state by the United States government during each of the five (5) years for which federal funds are apportioned by the said act and to maintain the roads constructed under the provisions of said act, and to make adequate provisions for carrying out such maintenance. The state highway commission is further authorized to co-operate with the United States government under any federal law in any manner necessary to secure for the State of Indiana the proportion of any federal appropriation which may be made in the future.

All moneys accruing to the state highway fund created by this act and available for expenditure in the construction and maintenance of highways, and all federal funds apportioned to this state under said act of congress shall be expended upon the highways comprising the system of state highways provided for by this act.

The state treasurer is hereby authorized to receive any and all moneys due the State of Indiana, under the provisions of this act, and shall pay out the same on orders of the state auditor which shall be issued by said state auditor upon orders by the state highway commission.

Validity of Act.

SEC. 35. If any one or more sections, sentences, clauses or phrases of this act shall be declared unconstitutional by the supreme court of Indiana, such decision will in no sense invalidate any other part of this act.

Repeal.

SEC. 36. An act entitled "An act creating a state highway commission, providing for the construction, recon-

struction, maintenance, repair and control of public highways, and providing for co-operation with the federal government in the construction of rural post roads," approved March 7, 1917, is hereby repealed, and any and all other laws and parts of laws in conflict with this act are hereby repealed. All office equipment, apparatus and other property belonging to the state highway commission as created by said act of March 7, 1917, and acquired in compliance with the provisions of such act are hereby transferred to and made the property of the state highway commission as created by this act.

Name of Act.

SEC. 37. This act shall be known and referred to as the Duffey-Buller highway commission law.

Emergency.

SEC. 38. Whereas, an emergency exists for the immediate taking effect of this act, the same shall be in full force and effect from and after its passage.

EXHIBIT C.

[Section 4356t-3, Kentucky Statutes, Baldwin's 1926 Supplement to Carroll's 1922 Edition.]

State Highway Engineer; Duties; Reports; Powers and Duties Concerning Roads; Co-operation with the Federal Government; Responsibilities of Counties; Regulations Concerning Funds; State Highway Commission to Have all Powers not here Prohibited.

In addition to the duties imposed upon it in the preceding section, the commission may cause to be printed and distributed from time to time bulletins containing useful information touching the construction and maintenance of roads; it shall on or before the first day of December, biennially, and oftener if so required by the governor, make

a report to the governor for general information and for the use of the General Assembly, which report shall give in detail a statement of all expenses and salaries, and shall set out in full all activities of the department, showing work done and work in progress, with a detailed statement of the cost or proposed cost thereof; the income and expenditures of the department shall be fully stated and, in addition, the report shall contain such useful information as the commission may deem of importance, together with recommendations looking towards increasing the efficiency of the department. The engineer shall make, under supervision of the commission, all necessary surveys in the establishment and construction of the system or (of) roads now or hereafter designated as such, and shall make and provide all necessary maps, prints, plans, and specifications of all work to be done on said roads, or any of them; and he shall, with the approval of the commission, select the route, or any part of the route, between the points designated, and may deviate from existing or proposed routes when necessity for such deviation is found, he shall establish the width and grades of all roads, and provide suitable and adequate systems of drainage; he shall determine the type or character of all roads, subject to the approval of the commission, which shall be constructed in whole or in part between designated points, and shall prepare estimates of costs, advertisements for bids, contracts for construction or maintenance and all necessary forms in connections therewith; he shall have full power, subject to the approval of the commission and within the limitations in this act, to designate roads and sections of roads for construction. After surveys, plans, specifications and estimates have been completed for any road, or any part or section of any road, and the type and character of such road has been determined, he shall advertise in newspapers published in or out of this Commonwealth for, and receive bids as provided in this act, he shall prescribe rules and regulations for the care and maintenance of roads after they have been constructed; he shall have full power to stop or regulate all

traffic or travel over any road in process of construction or improvement and until same is ready to be opened to the public, and for that purpose he shall have power to designate other roads for the accommodation of all travel and traffic until the road under construction is entirely completed and he shall have power to establish temporary roads to accommodate travel and traffic until the road under construction is finally completed and may, with the approval of the commission, make arrangements with the landowners for such necessary temporary rights of way for establishment of temporary roads, and he may contract and pay for same out of the road fund by certifying the cost thereof to the auditor; said temporary road shall be designated and opened for travel by the engineer and his agents at least two weeks before work is begun on the road proposed to be constructed or improved. The commission is empowered and authorized to advertise for bids and may enter into contract for the purchase of and to purchase any and all materials of any kind or character used in the construction or maintenance of roads and highways constructed or maintained under this law or laws hereafter enacted and may pay for such materials when delivered at the destination specified in the contract. For the faithful performance of any contracts entered into by the commission and any contractor, the commission may require bond or bonds, or secure same by any means they in their discretion may deem advisable or expedient. The commission is hereby authorized and empowered to enter into contracts and agreements with the United States government relating to the survey, construction and maintenance of roads under the provisions of the act of Congress, approved July 11, 1916, entitled: "An act to provide that the United States shall aid the states in the construction of rural post roads, and other purposes," which act will be found in the United States Statutes at Large, page 355, or any act amendatory thereof, or any act of Congress having in view the same, or substantially the same object, which may hereafter be enacted, and to submit such plan or program of construction

and maintenance as may be required by the Secretary of Agriculture of the United States, or any other officer who may be designated by Congress, and do all other things necessary fully to carry out the co-operation contemplated, or that may hereafter be contemplated and provided for by said act or any future act; the commission shall have the power, and it is hereby authorized to set apart and appropriate from the state road fund an amount equal to any sum or sums that have been or may be allotted to the Commonwealth of Kentucky by the United States government, or any sum or sums that may be necessary to carry on co-operative work with the United States government under existing or future laws and plans, and there is hereby appropriated from the state road fund sufficient funds to enable the said commission to pay the Commonwealth's portion for the construction and maintenance of rural post roads as provided for in the present, or any future federal aid act; the commission is hereby directed and authorized to prepare the necessary plans and specifications and to enter into contracts for and to supervise the construction of federal aid roads in accordance with the rules and regulations of the Secretary of Agriculture of the United States. The state treasurer is hereby authorized to receive such money or moneys as may be due under the provisions of the present or any future federal aid act and the same shall be paid out by him upon warrants of the auditor, which warrants shall be issued only in payment of claims certified to him by the commission. The commission shall have the power and authority at any time to add to the primary system of highways in this state, any and all roads, projects or sections thereof as may be designated by the federal government as state or national highways, and may adopt as part of such system any federal routes. The commission is hereby authorized to turn over to the respective counties any road or roads which may have been constructed under the state aid law, except such road or roads as may be a part of the primary system of roads now or hereafter designated as such, and the counties shall be

under full obligation to maintain such roads as may be turned over to and received by them. The commission shall have full power to carry out all contracts which may have been entered into under the state aid law, and the state shall be fully bound to pay its part of the construction of said roads under the state aid law, and the said commission is hereby authorized to certify to the auditor the amount due any county where the full amount due is determinable, and the auditor of public accounts is hereby authorized and directed to draw his warrant or warrants for such sum as is shown to be due any county by reason of the construction of roads under the state aid law. Such warrants shall be made payable to the county treasurer, or to any person in the county, through its fiscal court, may direct, and the county, or such person, may direct the auditor in what denominations said warrants shall be drawn. Said warrants shall be payable from the state road fund and shall be in the same form as warrants drawn by the auditor on the general fund. If there be not sufficient money in the road fund to meet such debts when so certified, then said warrants shall be so drawn as to bear interest at the rate of five per centum annually, payable semi-annually on the first day of January and the first day of July. Said warrants shall be numbered serially and the commission shall order them called in for cancellation from time to time when there is money in the State road fund available therefor, such call to be made through the state treasurer in the manner that interest-bearing warrants against the general fund are now called. In making such call, the commission shall take care not to discriminate against any county. No such warrant shall bear interest after it has been called for payment. If not otherwise provided, the laws governing the issuance and payment of warrants drawn against the general fund shall govern and control the warrants herein provided for; the said commission shall ascertain all gifts, donations or appropriations which have heretofore been made or promised by any person, firm, corporation, county or municipality in aid of the construction of any road

known as a state aid or state and federal aid road, and where such gift, donation, appropriation, or promise has not been completed, said gifts, donations or appropriations, or any promise thereof shall be binding and enforceable and of full effect the same as when made, and nothing in this act shall be construed to affect the validity thereof. In addition to the foregoing enumerated powers and duties it shall be the duty of the commission to perform any and all other duties imposed upon it by this or any other act and particularly shall it be its duty to do and cause to be done all things necessary to construct and maintain the system of primary roads now or hereafter designated as such, and where there is no provision of law covering any necessary thing to be done in the construction and maintenance of said roads, it shall do or cause to be done such necessary things in the way and manner best calculated in its judgment, to accomplish the necessary object, and it is intended that the provision contained in this act shall not be treated as restrictions on their powers, save as expressly stated or clearly implied, that is to say, it is intended that they may do all things necessary in the construction or maintenance of said roads except where the power is by this or another statute expressly or by clear implication denied or restricted. Wherever and whenever the word "department" occurs herein it shall mean the state highway department; and wherever and whenever the word "commission" is used herein it shall mean the state highway commission, and wherever and whenever the word "engineer" is used herein it shall mean the state highway engineer.

EXHIBIT D.

[Section 4356t-4, Kentucky Statutes, Carroll's 1922 Edition.]

Assent to Federal Aid Law and Amendments.

The general assembly of the commonwealth of Kentucky continues its assent to the provisions of the act of congress approved July 11, 1916, entitled: "An act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes," and further, the general assembly assents to any act amendatory of said act, or any new act of congress in furtherance of the same, or substantially for the same purposes, which may be enacted in the future.

EXHIBIT E.

[Acts of the General Assembly of Kentucky of 1928.]

CHAPTER 174.

AN ACT to repeal and re-enact section four thousand three hundred and fifty-six t-ten, Kentucky Statutes, Baldwin's one thousand nine hundred and twenty-six supplement to Carroll's one thousand nine hundred and twenty-two edition, being chapter one hundred and forty-seven of the Acts of the General Assembly of one thousand nine hundred and twenty-four.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

That section four thousand three hundred and fifty-six t-ten Kentucky Statutes, Baldwin's one thousand nine hundred and twenty-six Supplement to Carroll's one thousand nine hundred and twenty-two edition, being chapter one hundred and forty-seven of the Acts of the General Assembly of one thousand nine hundred and twenty-four, be and the same hereby is repealed and re-enacted so that said section as repealed and re-enacted shall read as follows:

1. Bridges and tunnels shall be considered as part of the primary system of State roads where it is necessary or desirable to construct bridges or tunnels as part of said roads, and the provisions of this act and all of the general laws relating to the construction of roads shall be construed to include bridges and tunnels, provided, however, that bids for the construction or reconstruction of only one type of bridge or tunnel shall be received and only one type shall be advertised, such advertisement and bids to be based on the plans and specifications for the particular bridge or tunnel.

2. The State Highway Commission hereby is authorized, out of State Highway funds, to construct and maintain or join with any adjoining state, county or municipality thereof, or with any county or municipality of this Commonwealth, or with the United States Government, or either or all of them, in the construction, reconstruction and maintenance of bridges across or tunnels under any boundary line stream of this State (including the Ohio River) for the purpose of connecting any primary road of this State with a hard surfaced road or street in an adjoining state, whenever, in the judgment of the Commission, the construction of such bridge is deemed necessary or advisable. In constructing bridges across or tunnels under any such boundary line stream, as herein authorized, said Highway Commission may locate same at such point as in the judgment of the Commission is deemed wise, provided that no such bridge or tunnel shall be located further than ten miles from the terminus of the primary road intended to be reached by such bridge or tunnel, and the State Highway Commission in such cases is authorized to construct such road as may be necessary to connect such bridge or tunnel with the primary road intended to be served thereby, and such connecting road when so constructed shall become and be a part of the primary system of State highways of this Commonwealth, and shall be maintained as such.

3. The State Highway Commission hereby is authorized and empowered to make and enter into written contracts with the owner or owners of any bridge spanning any boundary line stream of this State (including the Ohio River) or the owner or owners of any tunnel under any such stream for the purchase or lease of such bridge or tunnel to connect any primary road of this State with a hard surfaced road or street in an adjoining State, when the adjoining State or a subdivision thereof of county in this Commonwealth or subdivision thereof, or the United States joins with said Highway Commission in the purchase or lease of such bridge or tunnel and jointly or severally contributes to the purchase price thereof, or the annual rental price thereof, an amount equal to or in excess of the amount which the State Highway Commission proposes to contribute or expend for the purchase or lease of such connecting bridge or tunnel, and when so purchased or leased said State Highway Commission shall enter into a contract with such adjoining state or subdivision thereof, or county of this Commonwealth or subdivision thereof, or the United States or either or all of them for the joint maintenance and upkeep of such bridge or tunnel so purchased or leased. Said State Highway Commission may agree upon the purchase price and cost of said bridge or upon the terms of the lease, with the owner thereof, and with such other parties herein named or either or all of such other parties, and may further agree upon the proportion of the purchase price or annual rental to be contributed by said State Highway Commission and by such other adjoining state or subdivision thereof, county or counties within this Commonwealth or subdivision thereof, or the United States, or either or all of them, and when such contract of purchase or lease and the agreement apportioning the purchase price or annual rental of such bridge or tunnel between or among said State Highway Commission and such other parties is approved by the Attorney General of this Commonwealth, a copy of said contract of purchase or lease and

the agreement of apportionment shall be delivered by the State Highway Commission to the Auditor of Public Accounts of this Commonwealth who shall draw his warrant on the Treasurer of this Commonwealth at the time and for the amount provided in such purchase or lease contract and agreement of apportionment, which warrant shall specify that it is to be payable only out of the State Highway road funds, and it shall be delivered to the seller or owner of such bridge or tunnel concurrently with the warrants or vouchers for the amount or amounts contributed thereto for the purchase or lease thereof by such other adjoining state or subdivision thereof or county or counties in this Commonwealth or subdivision thereof, or the United States and all such contributing parties.

4. All acts or parts of acts in conflict herewith hereby are repealed to the extent only of such conflict, and it hereby is declared the intent of the General Assembly that nothing in this act is intended to be in conflict with the provisions of the State Highway Toll Bridge Act, and if any part of this act shall be construed to be in conflict with any provisions of said act it hereby is declared the legislative intent that such part of this act as may conflict with the said State Highway Toll Bridge Act shall be inoperative and shall not be construed as repealing any part of said State Highway Toll Bridge Act which authorizes the State Highway Commission to construct, purchase or reconstruct bridges and charge and collect tolls therefor. "Provided, however, that nothing in this act shall be construed as repealing any part of a bill heretofore passed at this session of the General Assembly entitled: 'An Act enabling cities of the first class to construct, operate and maintain bridges across navigable streams, so as to connect such cities with an adjoining state; providing for a Commission in such cities of the first class to construct, operate, control and maintain such bridges and fixing the powers and duties of such commission and providing for the issuance of revenue bonds of such cities to pay the cost there-

of through bridge tolls without the incurrence of indebtedness of any such city; and it hereby is declared the legislative intent that if there is any conflict between this bill and said bill, to the extent of such conflict, this bill shall be inoperative.' "

Approved March 21, 1928.

EXHIBIT F.

[Acts of the General Assembly of Kentucky of 1928.]

CHAPTER 172.

AN ACT increasing the power and duties of the State Highway Commission for the purpose of enabling the Commission, for the use and benefit of the Commonwealth of Kentucky, to build, or cause to be built, to purchase, by condemnation or otherwise, and to own, as aforesaid, and operate bridges and approaches thereto across any stream in Kentucky or across any stream that is the boundary line between Kentucky and any other state; also to charge tolls for passage over said bridges; also to fix the rate of said tolls; also to issue and sell non-taxable, interest bearing bonds, and to fix the rate of interest thereon, with which to build or cause to be built or purchase, by condemnation or otherwise, bridges and approaches thereto; also to fix the time of maturity of such bonds; also to provide by the collection of tolls for the money with which to retire said bonds and to pay the interest thereon; also to cover into the State Treasury all moneys collected hereby, and to create a special fund to be styled "The Highway Bridge Fund;" also to create a first lien on such tolls that may be collected for the use of any such bridge or approaches thereto; also to direct and empower the Attorney General, upon the request of the State Highway Commission, to institute and conduct such condemnation proceedings as may be made under the provisions of this act, in which he shall have the co-operation and assistance of the county attorney, or county attorneys of the county or counties in which the proceedings may be had; also to empower the Highway Commission to place or provide for casualty insurance on any bridge which may be built or acquired under the provisions of this act; also to provide for the ownership by the Commonwealth of Kentucky of such bridges and approaches; also giving precedence in the courts of all matters that may come before any of the courts concerning the provisions of this act; also to define the meaning of the words "bond" and "approach"; also to limit the acts of any member of the Highway Commission or any of its employees relative to the acquirement of property as well as to the purchase or sale of any bond issued under this act, or any contract made by the Commission; also to provide for the purchase of materi-

als through the Purchasing Commission of this Commonwealth; also to empower the Commission to reject any and all bids which may be made for material or for the erection of any bridge or approach thereto as well as any bids made to purchase any of said bonds; also providing that under certain limitations all materials shall be bought from and contracts let to the lowest and best bidder after being duly advertised; also providing for ample advertisement and for the opening of bids; also to provide that certain property already appropriated to another public use may be condemned and taken for the bridge purposes herein set out; and also declaring that the building or ownership of bridges and approaches contemplated by this act shall be a superior or paramount right or necessity; also providing that any portion of this act which may be held to be unconstitutional shall not affect any other part of this act; also repealing all acts or parts of acts in conflict herewith to the extent that they may be in conflict with this act; and also declaring an emergency clause, fixing the time when this act shall take effect; also to provide that nothing in this act shall repeal an act entitled: "An Act enabling cities of the first class to construct, operate and maintain bridges across navigable streams, so as to connect such cities with an adjoining state; providing for a commission in such cities of the first class to construct, operate, control and maintain such bridges and fixing the powers and duties of such commission and providing for the issuance of revenue bonds of such cities to pay the cost thereof payable solely through bridge tolls without the incurrence of indebtedness of any such city"; also to provide that no bridge shall be built by the employees of the Highway Commission unless and until the competitive bids, duly advertised for, shall have been received; also that the Commission may reject any and all bids; also that when two or more bridges are coupled or consolidated under one bond or under one contract that when such bridges have been paid for that thereafter no tolls shall be charged or collected on either or any such bridge or bridges; provided, however, that nothing in this act shall be construed to repeal or in any wise whatever to lessen or impair the authority of the State Highway Commission under any existing law, to either acquire or build bridges or regulate the tolls thereon; and provided further that it is hereby declared to be the legislative intent to increase the authority of the Commission rather than to repeal or impair any authority now in them, and also to increase and make available additional money with which to acquire and build bridges and to regulate and control tolls thereon; and also creating a first lien on said bridge or bridges together with such property, real or personal, as may appertain to such bridge or bridges; also providing that two bridges may be coupled under one contract or bond issue; also that the State road and bridge fund shall be reimbursed from the proceeds of money derived from bond issues on account of any money used by said Commission from said fund to begin the construction of any bridge or bridges; and also authorizing the Commission to use said road funds as aforesaid, but to be reimbursed.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. That the State Highway Commission be and hereby is authorized and empowered, as agents of the Commonwealth of Kentucky, to own real estate, bridges and the approaches thereto, and such other property as may be useful in connection therewith and to do all other things provided for in this Act, and whenever and wherever herein the word "bond" is used, either in the singular or plural, it shall be construed to mean "Bond or any other written evidence of indebtedness which the commission may issue in order to secure money with which to carry out the purposes of this Act;" and, also, wherever in this Act the word "approach" is used, it shall be construed to mean such spans or ramps and surfacing as may be necessary to afford proper and convenient access from a point on the natural ground not below usual high water elevation on one side of the stream to a like point on the other side, and over such distance as, in the opinion of the commission, is inconsistent with good engineering practice, to permit of access when the stream is at a high stage. No member of the Commission, the State Highway Engineer nor any other employee of the Commission shall have any interest in or association, either direct or indirect, with any person or with any corporation, firm, company, association, or partnership who or which may have any interest whatever in building or acquiring any bridge or in the sale or purchase of any bond that may be authorized by this Act.

Sec. 2. The Commission hereby is empowered to build or cause to be built, purchase and own for the Commonwealth of Kentucky such bridges and approaches on the State Primary System of Highways across any stream in the Commonwealth of Kentucky or across any stream which is the boundary line between the Commonwealth of Kentucky and any adjoining state, as, in its opinion, may be necessary or desirable; and to pay for same out of any fund that may be made available by this Act; and the Commis-

sion hereby is empowered to acquire by gift, purchase or condemnation proceedings, any bridge, real estate or other property, real or personal, that in its opinion may be useful or helpful in ultimately doing away with toll bridges on the State Primary System of Highways, and there shall be made by the commission a specific approval of each and every item that goes into the cost of every bridge built or caused to be built or purchased by it; it being the purpose of this last named provision that the commission shall be familiar with and approve every essential detail of every project entered into by the commission in order that no unnecessary or undesirable item may be entered into the cost of any bridge.

Sec. 3. When the commission can not acquire any bridge or the real or personal property, rights, privileges or easements needed for bridge or approach purposes, by agreement, with the owner thereof, whether by reason of disagreement as to price, or the legal incapacity, or absence of the owner or his inability to convey valid title, or by the owner or owners being unknown, or by reason of any other cause, it shall be lawful for the commission to condemn and take any bridge, real estate or personal property, rights, privileges or easements deemed necessary to such bridge or approach thereto in the same manner, and the compensation to be paid therefor shall be ascertained and paid in the same manner as provided in Sections eight hundred thirty-five, eight hundred forty, inclusive, Kentucky Statutes, for the condemnation of land by railroad companies. When it becomes necessary for the Commission to condemn any bridge, real estate or personal property, rights, privileges or easements, the Attorney General shall represent the commission and shall be assisted by the County Attorney, or attorneys of the county or counties wherein lies the bridge, real estate or personal property, rights, privileges or easements sought to be acquired. In any condemnation proceeding to acquire property for the purpose of establishing bridges ultimately to be used free of tolls

as set out in this act, any property, real or personal, including any bridge or bridges, together with approaches thereto, already appropriated to a public use, may be condemned and taken; the building and ownership and operation as set out in this Act hereby is declared to be a superior and paramount right and necessity. Provided, however, real estate used by any steam or electric railroad as a right-of-way shall be exempt from this provision.

Sec. 4. The said Commission for the purpose of obtaining funds with which to acquire rights-of-way or other property deemed necessary for the building of any bridge or approach thereto, and for the purpose of obtaining funds with which to purchase any bridge or approach, by condemnation or otherwise, and for the purpose of obtaining funds with which to build or cause to be built any bridge; and for the purpose of obtaining money with which to pay any and all expenses incidental to such building or purchase, including the approaches thereto, and such sum as may be needed to pay the cost of preparing plans, specifications and blue-prints, hereby is empowered to issue bonds in such amounts, bearing such rate of interest, not exceeding six per centum per annum, as may be deemed best by the said commission, which bonds shall become due and payable at any time after the expiration of one year that the commission may fix. The payment of said bonds, together with the interest thereon, shall be secured by a first lien on all tolls collected on said bridge or bridges, and also by a first lien on such bridge or bridges, its approaches and all real estate appurtenant thereto. The payment of no bond or interest thereon authorized by this Act shall be an obligation of the Commonwealth of Kentucky; nor shall any bond be payable out of any fund except such as may be derived from toll bridges; and, in addition thereto, recourse through and upon the lien herein given on the bridge or bridges themselves in event the tolls prove insufficient to retire the bond or bonds. If, however, the commission, in its judgment, should deem best, then it may

couple not more than two bridges under one contract and under one bond issue; and the tolls or revenue derived from such two bridges built or purchased under the one bond issue, shall be used for the payment of any bond or bonds, and interest, issued on account of both such bridges as thus may be coupled in one contract or under one bond issue.

Sec. 5. The commission may, through its own engineers, design all bridges the building of which is authorized by this Act; and may build same either with its own employees or by contract with any person, firm, or corporation; and any or all of such bridges, whether built by contract or by the Commission, shall be paid for out of the funds provided for by this Act. Provided, however, that no bridge or bridges shall be built by the Commission with its own employees, except after such advertising for bids and the reception thereof, and the rejection thereof, as is now provided for the construction of highways under the control of said commission, and subject to the further provisions of this Act as to advertising. The Commission may reject any and all bids. When any of the bonds authorized by this Act become due, payment shall be made to the holder or holders of the bonds; and, as hereinbefore said, such payment shall be made out of tolls collected on bridges; and, in addition thereto, in event the tolls be insufficient, by the enforcement of the lien herein given on the bridge or bridges; and the good faith of the Commonwealth hereby is pledged to give its moral support to the payment of both principal and interest on said bonds. The interest on said bonds shall be paid semi-annually, viz. July first and January first. Any bond which may be issued under the provisions of this Section, shall, like the bonds issued under any other section hereof, be free from taxation.

Sec. 6. The Commission hereby is empowered to charge and collect tolls and fix the rates thereof for such length of time as, in the opinion of the Commission, will be sufficient to pay off such bonds, and interest thereon, as may have been issued for the erection or purchase of any bridge or

bridges; and may be retired at any time thereafter, not less, however, than one year after its or their issue. The rate of tolls to be charged and collected, if fixed in any bond or bonds, shall not be reduced without the consent of the holder or holders thereof.

Sec. 7. After any bonded indebtedness or lien shall have been fully paid or discharged on account of any bridge or bridges built or acquired under the provisions of this Act, then, thereafter, only such toll as may be deemed necessary by the commission to pay the cost of some extraordinary casualty or calamity shall be charged or collected for the use of any of the aforesaid bridges; and any or all of the bridges purchased or built and fully paid for shall become the property of the State Highway Commission for the use and benefit of the Commonwealth of Kentucky.

Sec. 8. All purchases or contracts for the purchase of materials or supplies to be used in building or repairing bridges shall be made in accordance with the laws that now exist or that hereafter may be adopted relating to the powers of the Purchasing Commission of this Commonwealth.

Sec. 9. All bridges or substantial portions thereof, including the approaches thereto, when built by contract made between the commission and any person, firm, co-partnership or corporation, shall be let to the lowest and best bidder after due advertisement thereof, and after the preparation of detailed plans and specifications therefor, which shall be submitted to all prospective bidders in ample time before a contract shall be awarded. The commission may reject any and all bids made either for material for construction or for the bonds or any one or more of them.

Sec. 10. All bonds which may be issued under or by authority of this Act, shall be sold to the highest and best bidder after having been duly advertised in such manner as the commission in its prudence may deem best, and in accordance with all provisions of this Act.

Sec. 11. All competitive bids received under the terms of this Act shall be opened and read publicly by the com-

mission or its representatives at a designated place, day and hour, all of which shall be announced in such advertising as may be made relative thereto. "Advertising," as used in this Act, when not otherwise defined, shall be construed to mean such advertising where competitive bidding is sought as shall give actual and sufficient notice of not less than twenty (20) days to those who reasonably may be expected to make bids; and, in those cases in which competitive bidding is impracticable or impossible, in the opinion of the commission, it shall mean such advertising as shall give due notice to the public interested therein, and especially to that portion of the public which may be opposed to the purpose of the commission to purchase or enter into a proposed contract. The commission shall formulate a general plan for advertising, which plan shall be entered on its minutes and which shall be available to any person inquiring therefor.

Sec. 12. The commission may, in its discretion, carry a reasonable amount of casualty insurance on any bridge while under construction, which bridge is being built by the commission and not by contract; the said commission, in its discretion, is further empowered to carry a reasonable amount of insurance to cover any accident or destruction in part or in whole to any bridge until the same has been fully paid for and used only as a free bridge.

Sec. 13. The moneys collected under the provisions of this Act shall be covered into the State Treasury and constitute a fund styled "The Highway Bridge Fund;" and no part thereof shall be withdrawn from the treasury, except for the purposes of refunding to the State Road and Bridge Fund the cost of preparing plans, specifications, purchasing real estate, exercising the rights of eminent domain, issuing and selling of bonds provided for herein, the payment for labor and material and all expenses necessary to begin the construction of said bridge or bridges provided for under the provisions of this Act; and all other purposes spe-

cifically set out or reasonably implied herein, including the acquisition or building of bridges.

Sec. 14. All Acts or parts of Acts in conflict herewith are hereby repealed to the extent that they are in conflict. It is hereby declared to be the intention of the General Assembly of the Commonwealth of Kentucky that if any provision of this bill is held to be unconstitutional it shall not affect any other provision of this bill. Provided, however, that nothing in this Act shall be construed to repeal or in any wise whatever to lessen or impair the authority of the State Highway Commission, under any existing law, to either acquire or build bridges or to regulate tolls thereon; and it hereby is declared to be the legislative intent to increase the authority of the commission rather than to repeal or impair any authority now in them; also to increase and make available additional money with which to acquire and build bridges and to regulate and control tolls thereon.

Sec. 15. Whereas there is great need for additional bridges on the State Primary System of Highways in this Commonwealth, and whereas, there is a pressing need to abolish toll bridges and in their stead to establish bridges free of toll, therefore, an emergency hereby is declared to exist, and because of that emergency this Act shall take effect from and after its passage and approval by the Governor. No part of this Act shall be so construed as to repeal or to be in conflict with an Act entitled: An Act enabling cities of the first class to construct, operate and maintain bridges across navigable streams, so as to connect such cities with an adjoining State; providing for a commission in such cities of the first class to construct, operate, control and maintain such bridges and fixing the powers and duties of such commission and providing for the issuance of revenue bonds of such cities to pay the cost thereof payable solely through bridge tolls without the incurrence of indebtedness of any such city.

Approved March 17, 1928.

EXHIBIT G.

CHAPTER 370.

AN ACT to permit the granting of Federal aid in respect of certain roads and bridges.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any provision of the Act entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," approved July 11, 1916, or of the Federal Highway Act, the Secretary of Agriculture may extend, on the same basis and in the same manner as in the construction of any free bridge, Federal aid under such Acts, in the construction of any toll bridge and approaches thereto, by any State or States, or political subdivision or subdivisions thereof, upon the condition that such bridge is owned and operated by such State or States, or political subdivision or subdivisions thereof, and that all tolls received from the operation thereof, less the actual cost of operation and maintenance, are applied to the repayment to the State or States, or political subdivision or subdivisions thereof, of its or their part of the cost of construction of such bridge and upon the further condition that when the amount contributed by such State or States, or political subdivision or subdivisions thereof, in the construction of such bridge shall have been repaid from the tolls, the collection of tolls for the use of such bridge shall thereafter cease, and the same shall be maintained and operated as a free bridge.

Approved March 3, 1927.

EXHIBIT H.

CHAPTER 353.

AN ACT granting the consent of Congress to the Indiana Bridge Company to construct, maintain and operate a bridge across the Ohio River at Evansville, Indiana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the consent of Congress is hereby granted to the Indiana Bridge Company, its successors and assigns, to construct, maintain, and operate a bridge and approaches thereto across the Ohio River at a point suitable to the interests of navigation, at or near the city of Evansville, Indiana, in accordance with the provisions of the Act entitled "An Act to regulate the construction of bridges over navigable waters," approved March 23, 1926, and subject to the conditions and limitations contained in this Act.

SEC. 2. There is hereby conferred upon the Indiana Bridge Company, its successors and assigns, all such rights and powers to enter upon lands and to acquire, condemn, occupy, possess, and use real estate and other property needed for the location, construction, operation, and maintenance of such bridge and its approaches and terminals, as are possessed by railroad corporations for railroad purposes or by bridge corporations for bridge purposes in the State in which such real estate or other property is situated, upon making just compensation therefor, to be ascertained and paid according to the laws of such State, and the proceedings therefor shall be the same as in the condemnation and expropriation of property in such State.

SEC. 3. The said Indiana Bridge Company, its successors and assigns, is hereby authorized to fix and charge tolls for transit over such bridge, and the rates of toll so fixed shall be the legal rates until changed by the Secretary of War under the authority contained in the Act of March 23, 1906.

SEC. 4. After the completion of such bridge, as determined by the Secretary of War, either the State of Indiana,

the State of Kentucky, any political subdivision of either of such States, within or adjoining which any part of such bridge is located, or any two or more of them jointly, may at any time acquire and take over all right, title, and interest in such bridge and its approaches, and any interest in real property necessary therefor, by purchase or by condemnation in accordance with the laws of either of such States governing the acquisition of private property for public purposes by condemnation. If at any time after the expiration of twenty years after the completion of such bridge the same is acquired by condemnation, the amount of damages or compensation to be allowed shall not include good will, going value, or prospective revenues or profits, but shall be limited to the sum of (1) the actual cost of constructing such bridge and its approaches, less a reasonable deduction for actual depreciation in value; (2) the actual cost of acquiring such interests in real property; (3) actual financing and promotion cost, not to exceed 10 per centum of the sum of the cost of constructing the bridge and its approaches and acquiring such interest in real property; and (4) actual expenditures for necessary improvements.

SEC. 5. If such bridge shall be taken over or acquired by the States or political subdivisions thereof as provided in section 4 of this Act, and if tolls are charged for the use thereof, the rates of toll shall be so adjusted as to provide a fund sufficient to pay for the cost of maintaining, repairing, and operating the bridge and its approaches, to pay an adequate return on the cost thereof, and to provide a sinking fund sufficient to amortize the amount paid therefor as soon as possible under reasonable charges, but within a period of not to exceed twenty years from the date of acquiring the same. After a sinking fund sufficient to pay the cost of acquiring the bridge and its approaches shall have been provided, such bridge shall thereafter be maintained and operated free of tolls, or the rates of toll shall thereafter be so adjusted as to provide a fund of not to exceed the amount necessary for the proper care, repair, maintenance, and operation of the bridge and its ap-

proaches. An accurate record of the amount paid for acquiring the bridge and its approaches, the expenditures for operating, repairing, and maintaining the same, and of the daily tolls collected shall be kept, and shall be available for the information of all persons interested.

SEC. 6. The Indiana Bridge Company, its successors and assigns, shall within ninety days after the completion of such bridge file with the Secretary of War a sworn itemized statement showing the actual original cost of constructing such bridge and its approaches, the actual cost of acquiring any interest in real property necessary therefor, and the actual financing and promotion costs. The Secretary of War may, at any time within three years after the completion of such bridge, investigate the actual cost of constructing the same, and for such purpose the said Indiana Bridge Company, its successors and assigns, shall make available all of its records in connection with the financing and the construction thereof. The findings of the Secretary of War as to the actual original cost of the bridge shall be conclusive, subject only to review in a court of equity for fraud or gross mistake.

SEC. 7. The right to sell, assign, transfer, and mortgage all the rights, powers, and privileges conferred by this Act is hereby granted to the Indiana Bridge Company, its successors and assigns, and any corporation to which or any person to whom such rights, powers, and privileges may be sold, assigned, or transferred, or who shall acquire the same by mortgage foreclosure or otherwise, is hereby authorized and empowered to exercise the same as fully as though conferred herein directly upon such corporation or person.

SEC. 8. The right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved March 3, 1927.

FILE COPY

FILED
DEC 10 192
CHARLES ELMORE CRO
CL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. [redacted] ORIG[redacted]

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - - Complainant,

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of Indiana, - - - - - - - - - Defendants.

AMENDED BILL OF COMPLAINT.

JAMES W. CAMMACK,
Attorney General of the Commonwealth of Kentucky,

M. B. HOLIFIELD,
Ass't Attorney General of the Commonwealth of Kentucky,

CLIFFORD E. SMITH,
Ass't Attorney General of the Commonwealth of Kentucky,

Solicitors for Complainant, the Commonwealth of Kentucky.

WESTERFIELD-BONTE COMPANY, INCORPORATED, LOUISVILLE, KY.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. ORIGINAL.

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - - *Complainant,*

vs.

THE STATE OF INDIANA, AND
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL, ALL CITIZENS OF THE
STATE OF INDIANA, - - - - - - *Defendants.*

AMENDED BILL OF COMPLAINT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Commonwealth of Kentucky, one of the United States of America, by its solicitors, James W. Cammack, Attorney General of said State, M. B. Holifield and Clifford E. Smith, Assistant Attorneys General of

said State, present this amended bill of complaint in one paragraph against the State of Indiana and the following citizens of the State of Indiana, namely: James Duane Duncan, Claude F. Johnson, Walter L. Brandt, Robert N. Losey, Frank D. Hatfield, Todd Stoops, John F. Carson, Robert E. Rogers and Lester R. McCool, and your orator for amendment to the original bill of complaint states and shows that Specification number 30 on page 37 of said bill of complaint erroneously referred to "An Act granting the consent of Congress to the Indiana Bridge Company to construct, maintain and operate a bridge across the Ohio River at Evansville, Indiana," approved March 3, 1927, and further stated that said Act was copied in full as "Exhibit H" and incorporated therein by reference. The Act intended to be referred to was an act of Congress entitled "An Act granting the consent of Congress to the State of Indiana, its successors and assigns, to construct, maintain, and operate a bridge across the Ohio River, and permitting the State of Kentucky to act jointly with the State of Indiana in the construction, maintenance, and operation of said bridge," approved March 2, 1927. Said reference and Exhibit H are erroneous, and your orator now states that the contract set out in the original bill of complaint between the Commonwealth of Kentucky and the State of Indiana and all its provisions were further authorized by the following Acts of Congress, to wit: "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," approved July 11, 1916; "Federal Highway Act," approved November 9, 1921; "An Act to permit the granting of federal aid in respect to certain roads and bridges," approved March 3, 1927; and "An Act granting the consent of Congress to the State of In-

diana, its successors and assigns, to construct, maintain, and operate a bridge across the Ohio River and permitting the State of Kentucky to act jointly with the State of Indiana in the construction, maintenance and operation of said bridge," approved March 2, 1927. The last of said acts is copied in full herein, marked "Exhibit H" and is made a part hereof and incorporated herein by reference. The other exhibits and references in said original bill of complaint are correct.

2. Your orator reaffirms each and every allegation made in the original bill of complaint herein, except those made in Specification number 30, paragraph one, page 37, which are corrected in the Specification next above.

3. Wherefore your orator prays that this amended bill of complaint be filed and made a part of the bill of complaint herein, and further prays as in the original bill of complaint.

JAMES W. CAMMACK,
Attorney General of the Commonwealth of Kentucky,

M. B. HOLIFIELD,
Assistant Attorney General of the Commonwealth of Kentucky,

CLIFFORD E. SMITH,
Assistant Attorney General of the Commonwealth of Kentucky,

Solicitors for Complainant, the Commonwealth of Kentucky.

UNITED STATES OF AMERICA
COMMONWEALTH OF KENTUCKY } ss.
COUNTY OF FRANKLIN

James W. Cammack, being first duly sworn, on oath says that he is the duly elected, qualified and acting Attorney General of the Commonwealth of Kentucky; that he has read the foregoing amended bill of complaint and knows the contents thereof, and that the same is true to his own knowledge; and that as such Attorney General, he is duly authorized to pray leave to file the said amended bill of complaint.

JAMES W. CAMMACK,
Attorney General of the Commonwealth of Kentucky.

Subscribed and sworn to before me by James W. Cammack this 17th day of November, 1928. My commission expires the 20th day of March, 1932.

JANE WILLIAMS MOORE,
Notary Public in and for Franklin County, Ky.

EXHIBIT H.

[Public—No. 691—69th Congress.]
[H. R. 17128.]

AN ACT granting the consent of Congress to the State of Indiana, its successors and assigns, to construct, maintain, and operate a bridge across the Ohio River, and permitting the State of Kentucky to act jointly with the State of Indiana in the Construction, maintenance, and operation of said bridge.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

That the consent of Congress is hereby granted to the State of Indiana, acting by and through its State highway commission, its successors and assigns, to construct, maintain, and operate a bridge and approaches thereto across the Ohio River at a point suitable to the interests of navigation between a point in or near the city of Evansville, Indiana, and a point opposite in Henderson County, State of Kentucky, in accordance with the provisions of the Act entitled "An Act to regulate the construction of bridges over navigable waters," approved March 23, 1906, and subject to the conditions and limitations contained in this Act.

Sec. 2. There is hereby conferred upon the State of Indiana, acting by and through its State highway commission, its successors and assigns, all such rights and powers to enter upon lands and to acquire, condemn, occupy, possess, and use real estate and other property needed for the location, construction, operation, and maintenance of such bridge and its approaches as are possessed by railroad corporations for railroad purposes and by bridge corporations for bridge purposes in the State in which such real estate or other property is situated, upon making just compensation therefor, to be ascertained and paid according to the laws of such State, and the proceedings therefor shall be

the same as in the condemnation or expropriation of property in such State.

Sec. 3. The said State of Indiana, acting by and through its State highway commission, its successors and assigns, is hereby authorized to fix and charge tolls for transit over such bridge, and the rates of toll so fixed shall be the legal rates until changed by the Secretary of War under the authority contained in the Act of March 23, 1906.

Sec. 4. In fixing the rates of toll to be charged for the use of such bridge the same shall be so adjusted as to provide a fund sufficient to pay for the cost of maintaining, repairing, and operating the bridge and its approaches, and to provide a sinking fund sufficient to amortize the cost of such bridge and its approaches as soon as possible under reasonable charges, but within a period of not to exceed fifteen years from the completion thereof. After a sinking fund sufficient to pay the cost of constructing the bridge and its approaches shall have been provided, such bridge shall thereafter be maintained and operated free of tolls, or the rates of toll shall thereafter be so adjusted as to provide a fund of not to exceed the amount necessary for the proper care, repair, maintenance, and operation of the bridge and its approaches. An accurate record of the cost of the bridge and its approaches, the expenditures for operating, repairing, and maintaining the same, and of the daily tolls collected shall be kept and shall be available for the information of all persons interested.

Sec. 5. At any time before or after the completion of such bridge and State of Kentucky may acquire any such interest in such bridge, including its approaches as a part thereof, as it may elect to acquire, but not exceeding a one-half interest therein, upon such terms as may be agreed upon between said States; and upon failure to so agree, may acquire such interest by paying to the State of Indiana such sum as shall equal the actual cost of that proportion

of such bridge so acquired by it. And if at any time said State of Kentucky shall acquire a full one-half interest in such bridge, then the right to take tolls for the use of such bridge shall immediately cease; and said right to take tolls shall also cease if and when the net tolls taken, after deducting the cost of collecting such tolls, shall amount to one-half the actual cost of such bridge plus interest thereon at the rate of 5 per centum per annum; and thereafter said bridge shall be free and no toll shall be charged for the use thereof.

Sec. 6. The right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved, March 2, 1927.

FILE COPY

OCT 28

CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

NO. [redacted]GINAL

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - - - Complainant,

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN, CLAUDE F. JOHNSON,
WALTER L. BRANDT, ROBERT N. LOSEY,
FRANK D. HATFIELD, TODD STOOPS,
JOHN F. CARSON, ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of
Indiana, - - - - - - - - - - - Defendants.

MOTION OF COMPLAINANT, COMMONWEALTH OF KENTUCKY, FOR LEAVE TO FILE THE FOLLOWING:

1. MOTION OF COMPLAINANT, COMMONWEALTH OF KENTUCKY, TO STRIKE ANSWERS; THAT THE BILL OF COMPLAINT AS AMENDED BE TAKEN PRO CONFESSO, AND FOR A DECREE PRO CONFESSO.
2. SECOND SUPPLEMENTAL BRIEF FOR COMPLAINANT.

COMMONWEALTH OF KENTUCKY,
By JAMES W. CAMMACK,
Attorney General of Kentucky,

M. B. HOLIFIELD,
Ass't Attorney General of Kentucky,

CLIFFORD E. SMITH,
Ass't Attorney General of Kentucky,
Solicitors for Complainant, the Commonwealth of Kentucky.

Roberts Printing Co., Frankfort, Ky.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

NO. 16, ORIGINAL.

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - *Complainant*

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL, All Citizens of the State of Indiana, - - - - - - *Defendants.*

MOTION OF COMPLAINANT, COMMONWEALTH OF KENTUCKY, FOR LEAVE TO FILE THE FOLLOWING:

1. MOTION OF COMPLAINANT, COMMONWEALTH OF KENTUCKY, TO STRIKE ANSWERS; THAT THE BILL OF COMPLAINT AS AMENDED BE TAKEN PRO CONFESSO, AND FOR A DECREE PRO CONFESSO.
2. SECOND SUPPLEMENTAL BRIEF FOR COMPLAINANT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The complainant, Commonwealth of Kentucky, by J. W. Cammack, her Attorney General, moves this Honorable Court for leave to file the following:

1. Motion of complainant, Commonwealth of Kentucky, to strike answers; that the Bill of Complaint as amended be taken *pro confesso,* and for a decree *pro confesso.*

2. Second supplemental brief for complainant.

COMMONWEALTH OF KENTUCKY,
By JAMES W. CAMMACK,
Attorney General of Kentucky.
M. B. HOLIFIELD,
Assistant Attorney General of Kentucky.
CLIFFORD E. SMITH,
Assistant Attorney General of Kentucky.
Solicitors for Complainant,
the Commonwealth of Kentucky

FILE COPY

OCT 28 1
CHARLES ELMORE
C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

NO. [redacted] ORIGINAL.

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - - - Complainant,

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of Indiana, - - - - - - - - - - - - Defendants.

MOTION OF COMPLAINANT, COMMONWEALTH OF KENTUCKY, TO STRIKE ANSWERS; THAT THE BILL OF COMPLAINT AS AMENDED BE TAKEN PRO CONFESSO, AND FOR A DECREE PRO CONFESSO.

COMMONWEALTH OF KENTUCKY,
By JAMES W. CAMMACK,
Attorney General of Kentucky,

M. B. HOLIFIELD,
Ass't Attorney General of Kentucky,

CLIFFORD E. SMITH,
Ass't Attorney General of Kentucky,
Solicitors for Complainant, the Commonwealth of Kentucky.

Roberts Printing Co., Frankfort, Ky.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

NO. 16, ORIGINAL.

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - *Complainant*

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL, All Citizens of the State of Indiana, - - - - - *Defendants.*

MOTION OF COMPLAINANT, COMMONWEALTH OF KENTUCKY, TO STRIKE ANSWERS; THAT THE BILL OF COMPLAINT AS AMENDED BE TAKEN PRO CONFESSO, AND FOR A DECREE PRO CONFESSO.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Complainant, Commonwealth of Kentucky, moves this Honorable Court to strike out the answer of the defendant, State of Indiana, for the reason that

said answer does not state any defense to complainant's Bill of Complaint as amended.

2. To strike out the answer of the defendants, James Duane Duncan, Claude F. Johnson, Walter L. Brandt, Robert N. Losey, Frank D. Hatfield, Todd Stoops, John F. Carson, Robert E. Rogers, and Lester R. McCool, for the reason that said answer does not state any defense to complainant's Bill of Complaint as amended.

3. That the Bill of Complaint as amended be taken *pro confesso* as to the State of Indiana, and that the allegations therein, as to said defendant, be taken as true, without proof; and, that a decree *pro confesso* be entered in favor of complainant against said defendant.

4. That the Bill of Complaint as amended be taken *pro confesso* as to the defendants, James Duane Duncan, Claude F. Johnson, Walter L. Brandt, Robert N. Losey, Frank D. Hatfield, Todd Stoops, John F. Carson, Robert E. Rogers, and Lester R. McCool, and that the allegations therein, as to said defendants, be taken as true, without proof; and, that a decree *pro confesso* be entered in favor of complainant against said defendants.

COMMONWEALTH OF KENTUCKY,
By JAMES W. CAMMACK,
Attorney General of Kentucky.
M. B. HOLIFIELD,
Assistant Attorney General of Kentucky.
CLIFFORD E. SMITH,
Assistant Attorney General of Kentucky.
Solicitors for Complainant,
the Commonwealth of Kentucky.



IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1928.

COMMONWEALTH OF KENTUCKY,
Complainant,

vs.

THE STATE OF INDIANA and JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, LESTER R. McCOOL, All Citizens of the STATE OF INDIANA,
Defendants.

No. [redacted] Original

RETURN TO RULE TO SHOW CAUSE WHY LEAVE TO FILE THE BILL OF COMPLAINT IN THE ABOVE CAUSE SHOULD NOT BE GRANTED

and

BRIEF AND ARGUMENT.

PICKENS, DAVIDSON, GAUSE & PICKENS,
Indianapolis, Indiana,
WALTER PRITCHETT,
Indianapolis, Indiana,
HATFIELD, WELBORN & ROBERTS,
Evansville, Indiana,
Solicitors for Defendants.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

INDEX.

	Page
Return to rule to show cause	1-6
Brief and argument	7
Controversy involved	7
The relief sought	10
Cases cited	13
Exhibit A—Certified copy of answer	17

Authorities Cited.

Chicago etc. Ry. Co. v. Minnesota, 134 U. S. 418, 456	14
Dail v. Reynolds, 96 U. S. 340, 341	15
Essaner etc. Co. v. Kane, 258 U. S. 358, 360	16
Federal Judicial Code, Section 265	11
Haines v. Carpenter, 91 U. S. 254	16
Kline v. Burke Co., 260 U. S. 226, 229	15
Missouri etc. Railway Company v. McCann, 174 U. S. 580, 586	14
Missouri Pacific v. Nebraska, 164 U. S. 403-414	14
Moran v. Storges, 154 U. S. 256, 268	15
Sargeant v. Helton, 115 U. S. 348, 350	16
State of Iowa v. Abraham Schlimmer, Jr., et al., 248 U. S. 115	14
State of Louisiana v. State of Texas, 176 U. S. 1-15	13
State of Louisiana v. State of Texas, supra, 23-24	13
Tullis v. L. E. & W. R. R., 175 U. S. 348-353	14
United States Judicial Code, Section 265	15

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1928.

COMMONWEALTH OF KENTUCKY, Complainant, vs. THE STATE OF INDIANA and JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, LESTER R. McCOOL, All Citizens of the STATE OF INDIANA, Defendants.	No. ..... Original.

RETURN TO RULE TO SHOW CAUSE WHY LEAVE TO FILE THE BILL OF COMPLAINT IN THE ABOVE CAUSE SHOULD NOT BE GRANTED.

To the Honorable the Supreme Court of the United States:

The tendered bill of complaint and motion for leave to file same both disclosing that the State of Indiana and its officers are "ready, able and anxious" to perform the contract set out in said tendered bill of complaint, and would do so but for litigation pending in the Superior Court of Marion County, Indiana, involving the legality under the law of Indiana of the contract set out in said tendered bill

of complaint, and the State of Indiana, by and through its Governor and Attorney-General, as set out on page 8 of said motion for leave to file, having stated to this Court that the State of Indiana has no objection to said motion or to the granting of its prayer,

Come now James Duane Duncan, Claude F. Johnson, Walter L. Brandt, Robert N. Losey, Frank D. Hatfield, Todd Stoops, John F. Carson, Robert E. Rogers, Lester R. McCool, respondents to a rule entered by order of this Court on the 22nd day of October, 1928, requiring the State of Indiana and these respondents to show cause, if any there be, why leave to file a bill of complaint in the above-entitled cause against these respondents and the State of Indiana should not be granted, and, within the time fixed in said order, respectfully show to this Honorable Court that the motion of the Commonwealth of Kentucky for leave to file said bill of complaint should not be granted for the following reasons and each of them:

1. It appears from said tendered bill of complaint and motion for leave to file same that the only effective relief sought by the complainant is an injunction to stay a pending proceeding in the Superior Court of Marion County, Indiana, a court of general civil jurisdiction of the State of Indiana, and that neither said action so pending nor said tendered bill of complaint in any way relates to proceedings in bankruptcy.

2. Said motion for leave and tendered bill of complaint show that there is no controversy between the Common-

wealth of Kentucky and the State of Indiana, but that those states are in accord and agreement, and that the only relief sought against these respondents is a writ of injunction to stay proceedings already pending in a state court, to wit, the Superior Court of Marion County, Indiana.

3. Neither said motion for leave nor said tendered bill of complaint shows any controversy between the Commonwealth of Kentucky and the State of Indiana, or between the Commonwealth of Kentucky and citizens of the State of Indiana, cognizable by this Honorable Court.

4. Neither said motion for leave to file nor the tendered bill of complaint shows that the cause of action stated in said tendered bill of complaint arises under the Constitution of the State of Indiana, the laws of the United States, or treaties made or which will be made under their authority; nor one affecting ambassadors, other public ministers and consuls; nor of admiralty and maritime jurisdiction; nor a controversy to which the United States is or shall be a party; nor a controversy between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, nor between a state or the citizens thereof and foreign states, citizens or subjects.

5. The tendered bill of complaint alleges that the action therein stated is brought in this court on the ground that it is an action in equity relating to a controversy between two states of the United States, and also between the Commonwealth of Kentucky and citizens of the State of Indiana, but no breach or threatened breach of the contract between said states set out in the tendered bill of complaint is alleged on the part of the State of Indiana, and it affirmatively appears from said tendered bill of complaint that the State of Indiana and the proper officers thereof are "ready, able and anxious" to perform said contract, and would do so but for the fact that litigation has arisen between the State of Indiana and these respondents involving the legality of said contract; and these respondents say that the court in which said proceedings are pending is a court of said state with full and complete jurisdiction to hear and determine said cause and to determine the rights of said parties and the legality of said contract, and these respondents further say that the defendants to said action who are and constitute the Indiana State Highway Commission and other officers of the state have all entered a general appearance to said action and have filed an answer to the complaint denying the allegations thereof, and that said cause is now at issue and ready for trial upon the merits. That a certified copy of said answer (marked "Exhibit A") is filed with and made a part of the original of this return and specification

of objections and a copy thereof filed with the additional copies of return and specification of objections.

6. It appears from said motion for leave and tendered bill of complaint that the theory of the complaint in the proceedings pending in the Superior Court of Marion County, Indiana, and referred to in specification five (5) of this return, is that there is no authority in law under which Indiana could enter into the contract set out in the proposed bill of complaint, and that the same is void and of no force and effect, and that the Court in which said proceedings are pending is one of general civil jurisdiction in the State of Indiana, thereby disclosing that said proceedings involve the interpretation and determination of the statutes and laws of the State of Indiana.

7. Neither the motion for leave to file nor the tendered bill of complaint shows that the building of the bridge in the manner stated in said tendered bill of complaint has been authorized by Congress.

These respondents therefore say that the only purpose of the tendered bill of complaint is to enjoin these respondents from further prosecuting the proceedings in said bill of complaint referred to, pending in a state court of full and complete jurisdiction in the State of Indiana, and to prevent said state court and the Supreme Court of said state from determining the rights of the parties in said pending action and the legality of said contract under the law of the State of Indiana, being the same contract set out in plaintiff's tendered bill of complaint.

Wherefore, respondents pray this Court to deny the complainant's motion for leave to file bill of complaint.

Respectfully submitted,

JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL,

By PICKENS, DAVIDSON, GAUSE & PICKENS,
Indianapolis, Indiana,

WALTER PRITCHETT,
Indianapolis, Indiana,

HATFIELD, WELBORN & ROBERTS,
Evansville, Indiana,
Their Solicitors.

BRIEF AND ARGUMENT.

Controversy Involved.

In compliance with the rule of this Court relative to preparation of bills of complaint, the complainant in specification three (3) of its first paragraph of tendered bill of complaint states:

> "This action is brought in the Supreme Court of the United States, in the exercise of the original jurisdiction of said court, on the ground that it is an action in equity relating to a controversy between two states of the United States and also between the Commonwealth of Kentucky, as a state of the United States, and citizens of the State of Indiana, as another state of the United States."

In specification eighteen (18), found on page thirty-one (31) of the tendered bill of complaint, is the following language:

> "The State of Indiana by its State Highway Commission and proper officers immediately began the performance of the covenants of said contract after its execution, and said state and its officers are now **ready, able and anxious to perform said contract,** and would do so but for said litigation which has arisen involving the legality of said contract between citizens of Indiana and the officers of said state whose function it is to perform the covenants of said contract by the State of Indiana on its part to be performed."

Again, in specification twenty-two (22) of said tendered bill of complaint, on page 33, we find the following statement:

> "Prosecution of said litigation in said state court of Indiana by the aforementioned defendant citizens of Indiana will cause such breach of said contract by the State of Indiana."

The prayer of the first paragraph of the tendered bill of complaint found on page thirty-eight (38) asks that an injunction be issued restraining the defendant State of Indiana from breaching said contract by refusing to perform the same or any part thereof, and that the defendant citizens be restrained from prosecuting the said cause of action instituted by them as plaintiffs against the officers of the State of Indiana. As a part of the second paragraph of the tendered bill of complaint designated as specification thirty-six (36), found on page forty (40), it is stated:

> "**The State of Indiana will, if permitted by the Court, perform the covenants of said contract on its part to be performed, according to its terms,** and said State will perform all of said covenants of said contract if this Honorable Court decrees specific performance thereof."

The prayer of the second paragraph of the tendered bill of complaint is for specific performance of the contract by the State of Indiana.

In complainant's motion for leave to file bill of complaint we find, beginning at the bottom of page two (2), the following statement:

> "The State of Indiana, through its State Highway Commission, would be ready, able and willing to perform said contract according to its terms, but for the fact that the aforementioned citizens of Indiana have commenced an action against the members of said Highway Commission and other officers of said state in a court of general civil jurisdiction in said State of Indiana, namely, in room No. 2 of the Marion Superior Court, in Marion County, of said state, to enjoin said officers of the State of Indiana from performing said contract on the theory that said contract is unauthorized in law."

On page four (4) of complainant's motion for leave is the following language:

> "The State of Indiana has no objection to the granting of leave to file said bill of complaint, as is shown by the written statement to that effect executed by the Attorney-General of said state, approved by its Governor, which statement is attached hereto as Exhibit A and made a part hereof."

Exhibit A, just referred to, states that,

> "being informed of the intention of the Commonwealth of Kentucky to present a motion to the Supreme Court of the United States for leave to file its bill of complaint against the State of Indiana and certain citizens of Indiana, for the purpose of protect-

ing its rights arising from a contract entered into by said states for the construction of an interstate bridge over the Ohio River at the common boundary line of said states, the State of Indiana has no objection to said motion or to the granting of its prayer, for the reason that there is no other court of competent jurisdiction to adjudicate the rights of the Commonwealth of Kentucky which are involved in the litigation over said contract instituted by citizens of Indiana against the State of Indiana in one of the courts of Indiana."

The Relief Sought.

The only relief sought by the first paragraph of the tendered bill of complaint is an injunction restraining the defendant State of Indiana from breaching its contract and the individual defendants from prosecuting a cause already instituted and begun in a court of competent jurisdiction in the State of Indiana.

The only relief sought by the second paragraph of the tendered bill of complaint is for a decree for a specific performance of the contract by the State of Indiana.

Section 2, Article III of the Federal Constitution provides that the judicial power of the United States shall extend in all cases in law and equity arising under this Constitution, the law of the United States and treaties made or which shall be made under their authority, to all cases affecting ambassadors, other public ministers or consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a

party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands or grants of different states, and between a state or the citizens thereof and foreign states, citizens or subjects.

Section 10, Article I of the Federal Constitution provides that no state shall, without the consent of Congress, enter into any agreement or compact with another state.

The Federal Judicial Code, Section 265, provides:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

It is earnestly submitted that the tendered bill of complaint not only fails to disclose any controversy between the Commonwealth of Kentucky and the State of Indiana but affirmatively shows that there is no controversy.

The tendered bill of complaint also fails to show any controversy between the Commonwealth of Kentucky and citizens of Indiana, but does show affirmatively that the only controversy in which the citizens named are involved is with the State of Indiana, acting by and through its Highway Commission.

The tendered bill of complaint repeatedly states the willingness on the part of the State of Indiana to carry

out the contract and the provisions on its part to be performed, which contract is set out in said tendered bill of complaint; that it is "ready, willing and anxious to do so and would perform but for a suit pending against it in the State of Indiana" in a court of competent jurisdiction to pass upon the questions involved in that action. The tendered bill of complaint also charges that the defendant State of Indiana will perform said contract if permitted by this Court.

A permit must be asked by the party in whose favor the permit is granted. A permit is authority asked by one who is to exercise the permit, and a permit issued in this case would be in favor of the defendant State of Indiana, which is asking nothing.

An injunction must be asked by one who is seeking to exercise it against the opposite party, and there must be a showing that the opposite party is threatening to perform the act or acts sought to be performed. No such showing is made by the tendered bill.

The Court will neither enjoin the performance of an act in the absence of a showing of a threat to commit such act nor mandate the performance of an act in the absence of a showing of a refusal to perform by the party against whom the mandate is asked.

The tendered bill of complaint fails to show any controversy under the provisions of Section 2, Article III of the Federal Constitution, and fails also to show any au-

thority or permit from Congress to construct the bridge under the provisions of the contract set out in said bill.

Also, it fails to show any right to the relief under Section 265 of the Federal Code, but it does show affirmatively that the relief asked for against these respondents is an injunction against proceeding further in an action already commenced in a state court of full, complete and competent jurisdiction to hear and determine the questions involved.

Cases Cited.

The following authorities support the propositions in the order stated in the foregoing argument:

The jurisdiction conferred by Section 2, Article III of the Federal Constitution in all cases in which a state shall be a party means in all the enumerated cases in which a state shall be a party.

The second clause distributes the jurisdiction conferred in the previous one into original and appellate jurisdiction but does not profess to confer any.

State of Louisiana v. State of Texas, 176 U. S. 1-15.

The question of whether the conduct of an officer of a state is in violation of a law of the state would lie clearly with the state authorities, even though such violation may indirectly and incidentally affect interstate commerce.

State of Louisiana v. State of Texas, supra, 23-24.

The State of Iowa sought to file suit in the United States Supreme Court against the State of Minnesota, Abraham Schlimmer, Jr., and Charles Bechhoeffer, citizens of Minnesota, and Adolph Littmar, a citizen of Wisconsin, to recover certain taxes on property of Schlimmer, Sr., deceased, who fraudulently transferred it to Minnesota, he being a resident of Iowa. An objection was made to the filing of the bill of complaint on the ground that the only effective relief sought was an injunction against a proceeding in a state court which was administering the estate. The Court held that the Minnesota Probate Court had jurisdiction to administer assets of a deceased within the state, regardless of the domicile of the owner of the property. The Court held that the only effective relief was to enjoin the further administration of the estate of the deceased by the Court of Minnesota, which could not be done, and the request to file the bill of complaint was denied.

State of Iowa v. Abraham Schlimmer, Jr., et al., 248 U. S. 115.

United States Supreme Court will adopt rulings on state statutes and local laws which have been adopted by the state courts.

Tullis v. L. E. & W. R. R., 175 U. S. 348-353;
Missouri Pacific v. Nebraska, 164 U. S. 403-414;
Chicago etc. Ry. Co. v. Minnesota, 134 U. S. 418, 456;
Missouri etc. Railway Company v. McCann, 174 U. S. 580, 586.

A writ of injunction should not be granted by any court of the United States to stay proceedings in any court of a state except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.

United States Judicial Code, Section 265;
Dail v. Reynolds, 96 U. S. 340, 341;
Kline v. Burke Co., 260 U. S. 226, 229.

"The general rule is that a state court cannot enjoin proceedings in the courts of the United States, and this was held at a very early day in reference to a judgment of the Circuit Court (McKim v. Voorhies), while, on the other hand, it was determined that the Circuit Court would not enjoin proceedings in a state court and any attempt of that kind was forbidden by the act of Congress."

Moran v. Storges, 154 U. S. 256, 268.

The prohibition against interfering with actions in a state court applies to prevent an injunction at any stage of the proceeding in the state court.

"The sole purpose of the bill in this case was to restrain the execution of an order of the Circuit Court for the County of Escambia, a court of the State of Alabama, and no relief which upon the averments of the bill this Court could grant would be effectual without the writ of injunction prayed for. The Circuit Court of the United States was therefore deprived of power by the section just quoted (Rev. Statutes

United States, 720) to protect the rights of the plaintiff unless a writ of injunction was authorized by the law relating to proceedings in bankruptcy."

Sargeant v. Helton, 115 U. S. 348, 350;
Haines v. Carpenter, 91 U. S. 254.

The statute prohibiting United States courts granting injunctions to stay proceedings in state courts is based on principles of comity and designed to avoid inevitable and irritating conflicts of jurisdiction.

Essaner etc. Co. v. Kane, 258 U. S. 358, 360.

Wherefore, it is respectfully submitted that complainant's motion for leave to file bill of complaint should not be granted.

JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL,

By PICKENS, DAVIDSON, GAUSE & PICKENS,
Indianapolis, Indiana,

WALTER PRITCHETT,
Indianapolis, Indiana,

HATFIELD, WELBORN & ROBERTS,
Evansville, Indiana,

Their Solicitors.

EXHIBIT A.

State of Indiana, Marion County—ss.

Be It Known, That on the 30 day of October, 1928, being the 26th judicial day of the October Term, 1928, of the Superior Court of Marion County, held at the Court House in the City of Indianapolis, County of Marion and State of Indiana, before the Honorable Linn D. Hay, Judge of said court, the following proceedings were had in the cause of James Duane Dungan et al. v. John D. Williams et al.

October Term,

October 30, 1928—26th Judicial Day.

James Duane Dungan et al.
vs.
John D. Williams et al. } A-46,115.

Comes now the defendants and file answer in general denial as follows (H. I.)

Linn D. Hay, Judge.

State of Indiana, Marion County—ss.

I, the undersigned, Clerk of the Superior Court of Marion County, in the State of Indiana, do hereby certify that the foregoing is a true and complete copy of the proceedings had in said court, and entered on the records thereof, in the above-entitled cause, on the day and year first aforesaid, as appears of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Superior Court, at my office, in the City of Indianapolis, this 8th day of November, 1928.

George O. Hutsell,
(Seal) Clerk Superior Court, Marion County.

FILE COPY

FEB 18

CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. [redacted] ORIGINAL

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - - Complainant,

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of Indiana, - - - - - - - - - Defendants.

MOTION OF THE STATE OF INDIANA FOR LEAVE TO FILE ANSWER.

STATE OF INDIANA, Defendant,
By Her Solicitors.
JAMES M. OGDEN,
Attorney General of Indiana,
CONNOR D. ROSS,
Assistant Attorney General of Indiana.

Wm. B. Burford Printing Co., Indianapolis

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 16. ORIGINAL.

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - - - *Complainant,*

vs.

THE STATE OF INDIANA, AND
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL, ALL CITIZENS OF THE
STATE OF INDIANA, - - - - - - - *Defendants.*

MOTION OF THE STATE OF INDIANA FOR LEAVE TO FILE ANSWER.

The defendant, State of Indiana, by her solicitors, James M. Ogden, Attorney General, and Connor D. Ross, Assistant Attorney General, respectfully states:

That James M. Ogden is the duly elected and qualified Attorney General of the State of Indiana, and as such is authorized to pray leave to file the answer for

the State of Indiana hereinafter mentioned, and he presents this motion for leave of the State of Indiana to file said answer, a copy of which accompanies this motion.

(1) That said answer admits the execution of the contract set out in the complainant's bill of complaint.

(2) That said answer admits the delay in the performance of said contract and that the delay in performance thereof is in breach of its terms.

(3) That the cause for the delay in performance thereof is the suit filed by certain citizens of the State of Indiana, named as defendants herein, and that, since the proposed bridge involves the expenditure of several millions of dollars on the part of the State of Indiana, said defendant does not feel warranted in proceeding with the construction of said bridge until there is a final adjudication establishing its right to construct said bridge under the contract as against the challenge of such right as made in the suit filed in the state court.

(4) That if the relief prayed by the complainant be granted upon either paragraph of its bill of complaint the defendant, State of Indiana, will thereupon immediately proceed with the construction of said bridge.

WHEREFORE, the State of Indiana prays that this honorable court grant leave to file answer herein, copies of which have been given to and accepted by the complainant and said co-defendants, citizens of Indiana.

Respectfully submitted,

STATE OF INDIANA, *Defendant,*
By Her Solicitors,
JAMES M. OGDEN,
Attorney General of Indiana.
CONNOR D. ROSS,
Assistant Attorney General of Indiana.

STATE OF INDIANA,
COUNTY OF MARION, } ss:

James M. Ogden, being first duly sworn, says that he is the duly elected and qualified Attorney General of the State of Indiana; that he has read the foregoing motion for leave to file answer herein and that he knows the contents thereof; that as such official he is authorized to file said answer.

JAMES M. OGDEN.

Subscribed and sworn to before me this 13th day of February, 1929.

LAURINE HARVEY,
Notary Public in and for Marion County, Indiana.

My commission expires November 20, 1932.

FILE COPY

CHARLES ELMORE CR
CL

IN THE

Supreme Court of the United States

OCTOBER TERM, 192[redacted]

No. [redacted] ORIGIN[redacted]

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - - Complainant,

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of Indiana, - - - - - - - - Defendants.

RETURN TO RULE TO SHOW CAUSE ISSUED IN ABOVE ENTITLED CAUSE ON OCTOBER 22, 1928.

STATE OF INDIANA,
By ARTHUR L. GILLIOM,
Attorney General of Indiana,
CONNOR D. ROSS,
Assistant Attorney General of Indiana,
Solicitors for the State of Indiana.

Wm. B. Burford Printing Co., Indianapolis

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. ORIGINAL.

IN EQUITY.

COMMONWEALTH OF KENTUCKY - - - - *Complainant,*

vs.

THE STATE OF INDIANA, AND
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL, ALL CITIZENS OF THE
STATE OF INDIANA, - - - - - - - - - *Defendants.*

RETURN TO RULE TO SHOW CAUSE ISSUED IN ABOVE ENTITLED CAUSE ON OCTOBER 22, 1928.

The State of Indiana, in response to the rule issued in the above entitled cause on October 22, 1928, to show cause why the Commonwealth of Kentucky should not be granted leave to file a bill of complaint against the State of Indiana in the above entitled cause, says that it has no cause to show why such leave should not be granted.

The State of Indiana intends ultimately to perform the contract referred to in the motion of the Commonwealth of Kentucky, if permitted or ordered to do so by the courts in which litigation over said contract is pending, but it does not intend to do so until after such litigation is finally disposed of favorably to such performance. The cost of the interstate bridge contemplated by said contract will approximate $4,000,000, and the State of Indiana does not intend to proceed further with the performance of said contract and incur further obligation thereunder until it is finally adjudicated by the courts that it may lawfully do so.

The State of Indiana entered into said contract with the Commonwealth of Kentucky by virtue of authority of its own statutes and an act of the Congress of the United States of March 2, 1927 (the reference in said bill of complaint to an act of Congress of March 3, 1927, being erroneous as to the congressional consent relied upon). The State of Indiana would continue the performance of said contract in accordance with its terms but for the fact that on September 28, 1928, certain of its citizens who were named as defendants in said tendered bill of complaint filed their action in one of the courts of the State of Indiana, to enjoin such performance, as alleged in said bill of complaint.

The cause in said state court of Indiana is now at issue so it may be set for trial, but the officers of the State of Indiana who are defendants in said cause did, on October 2, 1928, file their motion for continuance in said cause pending the proceedings in the Supreme Court of the United States between the Commonwealth of Kentucky and the parties to said cause in said state court, a copy of which motion is attached and is made a part hereof as Exhibit "A." The motion for continuance was sustained by said state court on November 8, 1928, and

the cause in said state court is now pending in the status aforesaid.

Because of the public interest involved in the subject-matter of the contract for the construction of said interstate bridge, and because there is no court other than the Supreme Court of the United States that has, or can have, complete jurisdiction over the parties and the subject-matter involved in the controversy that has arisen over the performance of said contract, the State of Indiana yields to the jurisdiction of the Supreme Court of the United States in the premises. It is in the public interest that an early adjudication of said controversy be had which will be final and binding on all parties interested.

STATE OF INDIANA,
By ARTHUR L. GILLIOM,
Attorney General of Indiana,

CONNOR D. ROSS,
Assistant Attorney General of Indiana,
SOLICITORS FOR THE STATE OF INDIANA.

STATE OF INDIANA, } ss.
COUNTY OF MARION, }

ARTHUR L. GILLIOM, being first duly sworn on his oath, says that he is the duly elected, qualified and acting Attorney General of the State of Indiana; that he is familiar with the facts stated in the foregoing return; and that said facts as therein stated are true.

ARTHUR L. GILLIOM.

Subscribed and sworn to before me this 13th day of October, 1928.

IRENE SATTELLE,
Notary Public.

My commission expires March 14, 1932.

EXHIBIT A.

STATE OF INDIANA, }
COUNTY OF MARION, } ss.

IN THE MARION SUPERIOR COURT ROOM 2.

JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT H. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, AND LESTER R. MCCOOL, *Plaintiffs,*

v.

JOHN D. WILLIAMS, JOHN D. WILLIAMS, Director of Indiana State Highway Commission; ALBERT J. WEDEKING, ALBERT J. WEDEKING, Chairman and Member of Indiana State Highway Commission; GEORGE E. HERSHMAN, GEORGE E. HERSHMAN, Member of Indiana State Highway Commission; ROBERT B. BOREN, ROBERT B. BOREN, Member of Indiana State Highway Commission; JESS L. MURDEN, JESS L. MURDEN, Member of Indiana State Highway Commission; LEWIS S. BOWMAN, as Auditor of State of State of Indiana; GRACE BANTA URBAHNS, as Treasurer of State of the State of Indiana, *Defendants.* } No.

The defendants, separately and severally move the court for a continuance of this cause, and ask that it not be set for trial for the following reasons:

That this is a suit in which the above named plaintiffs, as citizens and taxpayers, seek to enjoin the defendants from carrying out a certain contract entered into by and between the Commonwealth of Kentucky and the State of

Indiana, through their respective highway commissions, for the construction of a bridge over the Ohio River near Evansville.

That the Commonwealth of Kentucky, on October 22, 1928, filed in the Supreme Court of the United States its motion for leave to file its bill of complaint against the State of Indiana and the plaintiffs above named, in which motion said Commonwealth seeks to invoke the original jurisdiction of the Supreme Court of the United States for the purposes:

> (a) Of enjoining the defendants from causing a breach and from breaching a contract entered into on the 12th day of September, 1928, by and between said States for the construction of an interstate bridge over the Ohio River, near Evansville, Indiana, at the common boundary line between the State of Indiana and the Commonwealth of Kentucky.
>
> (b) Of procuring a decree against the State of Indiana for the specific performance of its part of said contract. The part to be performed by the State of Indiana under said contract is susceptible of specific performance. Said State now has made the necessary appropriation of money to enable it to perform its part of said contract. Pursuant to the provisions of said contract the State of Indiana has employed, with the approval of the Commonwealth of Kentucky, consulting engineers who have contracted with said States to prepare the plans and specifications for said bridge and to supervise its construction throughout until completion.

That said motion so filed by the Commonwealth of Kentucky further recites, among other things, that:

Said contract was entered into by and between said States pursuant to statutory authority under statutes of both States and under statutes of the United States. Said contract provides for immediate and continued performance thereof until said bridge shall have been constructed by said States acting in co-operation, as shown by the copy of said contract as embodied in the accompanying bill of complaint.

The State of Indiana, through its State Highway Commission, would be ready, able and willing to perform said contract, according to its terms but for the fact that the aforementioned citizens of Indiana have commenced an action against the members of said Highway Commission and other officers of said State in a Court of general civil jurisdiction in said State of Indiana, namely, in Room No. 2 of the Marion Superior Court in Marion County of said State, to enjoin said officers of the State of Indiana from performing said contract on the theory that said contract is unauthorized in law. Although summons in said case are not returnable until October 20, 1928, and although it is not known how the said Court or the Supreme Court of Indiana would decide said case, the State of Indiana will not perform said contract further until there is a final adjudication of said case by the Courts of last resort.

and that, because said contract provides for immediate and continued performance, the delay caused by litigation in the courts of Indiana would in itself constitute a breach of said contract by the State of Indiana, and that the prosecution of said litigation by the aforementioned citizens would cause such breach by the State of Indiana; and that—

The Commonwealth of Kentucky is not a party to said action in said Marion Superior Court, and no judgment rendered in said case by any Court in the State of Indiana can or will be binding on the Commonwealth of Kentucky. Yet the purpose of said litigation is to enjoin performance of said contract by the State of Indiana, and the rights of the Commonwealth of Kentucky arising out of said contract are vitally involved and affected by said litigation in said State Court. The Commonwealth of Kentucky is without any remedy in the premises unless leave is granted to file said bill of complaint in this Honorable Court, and it will sustain irreparable damages and loss unless it is permitted to file said bill of complaint and have its rights under said contract adjudicated by this Honorable Court.

The defendants further show that the Supreme Court of the United States, on said date, issued a rule against the State of Indiana and the aforementioned citizens, plaintiffs herein, to show cause why the bill of complaint of said Commonwealth should not be filed and that said rule is returnable on November 19, 1928.

The defendants further show that the State of Indiana, through the highway officials named as defendants in the cause pending in this Court, will not carry out the contract until the litigation growing out of said contract is finally adjudicated.

The defendants further show that the Supreme Court of the United States has jurisdiction to adjudicate the questions raised by the litigation now pending in this court and also to adjudicate the question of the validity of the contract involved in the litigation herein; that this court has no jurisdiction over the Commonwealth of Kentucky and could not adjudicate the rights of said

Commonwealth in and to said contract, and could not fully and finally adjudicate the validity of said contract as between the Commonwealth of Kentucky and the State of Indiana.

That, in the event the Supreme Court of United States grants the motion of said Commonwealth, there would be a conflict of jurisdiction, and the jurisdiction of the Supreme Court would be superior to that of this court.

That for the reasons stated the suit pending in this court should rest in abeyance until the termination of the proceedings in the Supreme Court of the United States.

WHEREFORE, the defendants move that this cause be continued until the final action of the Supreme Court of the United States in the proceedings filed therein by the Commonwealth of Kentucky.

ARTHUR L. GILLIOM,
Attorney General,

CONNOR D. ROSS,
Assistant Attorney General.

STATE OF INDIANA,
COUNTY OF MARION, } ss.

CONNOR D. ROSS, being duly sworn, shows that he is an Assistant Attorney General of Indiana and one of the attorneys in the above entitled cause; and that the allegations of the foregoing motion are true in substance and in fact.

CONNOR D. ROSS,
Assistant Attorney General.

Subscribed and sworn to before me this 1st day of November, 1928.

IRENE SATTELLE,
Notary Public.

My commission expires March 14, 1932.

FILE COPY

DEC 14 192
CHARLES ELMORE C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

No. [redacted] ORIGINAL.

IN EQUITY. [redacted]

COMMONWEALTH OF KENTUCKY, - - Complainant,

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of Indiana, - - - - - - - - Defendants.

ANSWER TO COMPLAINT BY THE STATE OF INDIANA.

STATE OF INDIANA, Defendant,
ARTHUR L. GILLIOM,
Attorney General of Indiana,
CONNOR D. ROSS,
Assistant Attorney General of Indiana.

Wm. B. Burford Printing Co., Indianapolis

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. ORIGINAL.

IN EQUITY.

COMMONWEALTH OF KENTUCKY - - - *Complainant,*

vs.

THE STATE OF INDIANA, AND
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL, ALL CITIZENS OF THE
STATE OF INDIANA - - - - - - *Defendants.*

ANSWER TO COMPLAINT BY THE STATE OF INDIANA.

Comes now the State of Indiana by her solicitors, Arthur L. Gilliom, Attorney General of Indiana, and Connor D. Ross, Assistant Attorney General of Indiana, and admit that the allegations of plaintiff's complaint are true.

The only excuse which the State of Indiana offers for failure to perform the contract set out in plaintiff's complaint is the litigation, mentioned in the complaint, instituted by her above named co-defendants against the officers of the State of Indiana whose function it is to perform said contract. The resulting delay in performance of said contract is in breach of its terms, which contemplate immediate and continued performance. But inasmuch as the validity of said contract has been drawn in question by the litigation aforesaid in one of the courts of the State of Indiana, and, inasmuch as performance of the contract involves the expenditure of several millions of dollars of public monies belonging to the State of Indiana, it does not feel warranted in proceeding further with the performance thereof until there is a final adjudication establishing the right of the State of Indiana to perform the contract against the challenge of such right as made in the litigation in said state court. The State of Indiana believes said contract is valid.

If this honorable court shall grant the relief prayed against Indiana by plaintiff Commonwealth of Kentucky in either of its paragraphs of complaint, the State of Indiana will thereupon immediately proceed with the performance of said contract and will continue such performance until the objects of said contract shall have been fully attained as contemplated by the terms thereof.

Respectfully submitted,

STATE OF INDIANA, Defendant.
By her solicitors,
ARTHUR L. GILLIOM,
Attorney General of Indiana,
CONNOR D. ROSS,
Assistant Attorney General of Indiana.



FILE COPY

Office Supreme Court
FILED
FEB 15 19
CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

[redacted] 7

No. [redacted] ORIGINAL.

IN EQUITY.

COMMONWEALTH OF KENTUCKY,
Complainant,

vs.

THE STATE OF INDIANA, AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, AND LESTER R. McCOOL, ALL CITIZENS OF THE STATE OF INDIANA,
Defendants.

MOTION TO DISMISS BILL OF COMPLAINT, AND ANSWER BY JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, AND LESTER R. McCOOL.

FRED C. GAUSE,
Indianapolis, Indiana,
WALTER PRITCHARD,
Indianapolis, Indiana,
✓ FRANK H. HATFIELD,
Evansville, Indiana,
LOUIS L. ROBERTS,
Evansville, Indiana,
Solicitors for Said Defendants.

GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 18. Original.

IN EQUITY.

COMMONWEALTH OF KENTUCKY,
Complainant,

vs.

THE STATE OF INDIANA, AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, AND LESTER R. McCOOL, ALL CITIZENS OF THE STATE OF INDIANA,
Defendants.

MOTION TO DISMISS BILL OF COMPLAINT, AND ANSWER BY JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, AND LESTER R. McCOOL, DEFENDANTS.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

MOTION TO DISMISS.

Now come the above named James Duane Duncan, Claude F. Johnson, Walter L. Brandt, Robert N. Losey,

Frank D. Hatfield, Todd Stoops, John F. Carson, Robert E. Rogers, and Lester R. McCool, defendants to the bill of complaint herein, and jointly and severally move that this court dismiss the bill of complaint as amended heretofore filed herein on the following grounds:

(*1*) It appears from the bill of complaint and the answer thereto filed by the State of Indiana that there is no controversy between the Commonwealth of Kentucky and the State of Indiana.

(*2*) It appears from the bill of complaint that there is no controversy between the Commonwealth of Kentucky and the individual defendants to the bill of complaint.

(*3*) That the only effective relief sought by the complainant, Commonwealth of Kentucky, is an injunction enjoining prosecution by the individual defendants to this bill of complaint of a suit (which does not in any way relate to proceedings in bankruptcy) instituted by such individual defendants in the Superior Court of Marion County, Indiana, a court of general civil jurisdiction of the State of Indiana; and whereas, by Section 265 of the Judicial Code of the United States, it is provided that a writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state except in cases where such an injunction may be authorized by any law relating to proceedings in bankruptcy.

(*4*) It appears from the bill of complaint filed herein that the theory of the complaint in said suit pending in the Superior Court of Marion County, Indiana, is that there is no authority under the laws of the State of Indiana, under which the State of Indiana could enter into the contract set out in the bill of complaint, and that such contract is void and of no effect, thereby dis-

closing that said proceedings involved the interpretation of the statutes and laws of the State of Indiana.

(5) That the contract between the Commonwealth of Kentucky and the State of Indiana, set forth in the bill of complaint, is not binding on the State of Indiana, and is entered into without authority of law, and is unenforceable against the State of Indiana.

(6) That the Commonwealth of Kentucky is not entitled to any relief in equity, inasmuch as it has a plain, adequate and complete remedy at law.

ANSWER.

Now, without waiving the aforesaid motion to dismiss the bill of complaint herein and saving and reserving to themselves all benefits and advantages and exceptions which may be taken to the uncertainties, errors and insufficiencies of the bill of complaint, the said James Duane Duncan, Claude F. Johnson, Walter L. Brandt, Robert N. Losey, Frank D. Hatfield, Todd Stoops, John F. Carson, Robert E. Rogers, and Lester R. McCool, defendants to the bill of complaint herein, jointly and severally, for answer unto the bill of complaint, or unto so much thereto as they are advised is material or necessary to make answer unto, answering say:

1. Said defendants admit that the Commonwealth of Kentucky is one of the states of the United States of America, but are not informed as to whether this action is brought on its behalf pursuant to written request made by the Attorney General of Kentucky, by the Governor of Kentucky, and by the State Highway Commission of Kentucky, and therefore neither admit nor deny the same but require strict proof thereof.

2. Said defendants admit that the State of Indiana is one of the states of the United States of America, and that the other defendants to the bill of complaint are all citizens of the State of Indiana.

3. Said defendants deny that this suit relates to a controversy between two states of the United States and also between the Commonwealth of Kentucky, as a state of the United States, and citizens of the State of Indiana, as another state of the United States; but on the contrary allege that it appears from the bill of complaint and allegations thereof and answer filed by the

State of Indiana thereto, that there is no controversy between the Commonwealth of Kentucky and the State of Indiana, and there is no controversy between the State of Kentucky and the said defendants.

4. Said defendants admit all the allegations contained in paragraph 4 of the bill of complaint.

5. Said defendants neither admit nor deny the allegations contained in paragraph 5 of the bill of complaint, but require strict proof thereof, and on information and belief allege that the boundary line between the Commonwealth of Kentucky and the State of Indiana at or near the City of Evansville, Indiana, has heretofore been established by the Supreme Court of the United States, by its decision in the case of *Indiana* v. *Kentucky,* 136 U. S. 479, and that the boundary line of the Commonwealth of Kentucky, at or near the City of Evansville, and at or near the point where the bridge proposed to be erected under the Act set forth in the bill of complaint is north of the north bank of the Ohio River, and that the entire bridge and all approaches (as the term approaches is correctly interpreted) thereto, referred to in said contract, when constructed, will be entirely within the Commonwealth of Kentucky, and that no part thereof will be in the State of Indiana.

6. Said defendants admit all the allegations contained in paragraph 6 of the bill of complaint.

7. Said defendants admit all the allegations contained in paragraph 7 of the bill of complaint.

8. Said defendants do not have sufficient information to answer the allegations contained in paragraph 8 of the bill of complaint, and therefore neither admit nor deny the same, but require strict proof thereof.

9. Said defendants do not have sufficient information to answer the allegations contained in paragraph 9 of

the bill of complaint and therefore neither admit nor deny the same but require strict proof thereof.

10. Said defendants do not have sufficient information to answer the allegations contained in paragraph 10 of the bill of complaint and therefore neither admit nor deny the same but require strict proof thereof.

11. Said defendants do not have sufficient information to answer the allegations contained in paragraph 11 of said bill of complaint, with respect to United States Route Number Forty-one (41), and therefore neither admit nor deny the same but require strict proof thereof, but admit that there is no bridge across the Ohio River, at or near Evansville, Indiana, at the boundary line between the States of Kentucky and Indiana.

12. Said defendants do not have sufficient information to answer the allegations contained in paragraph 12 of said bill of complaint, and therefore neither admit nor deny the same but require strict proof thereof.

13. Said defendants do not have sufficient information to answer the allegations contained in paragraph 13 of said bill of complaint, and therefore neither admit nor deny the same but require strict proof thereof.

14. Said defendants do not have sufficient information to answer the allegations contained in paragraph 14 of said bill of complaint, and therefore neither admit nor deny the same but require strict proof thereof.

15. Said defendants admit that an Act of Congress, as set forth in the bill of complaint as Exhibit H, was approved March 3, 1927, but aver that said Act grants no rights to the State of Indiana or the Commonwealth of Kentucky but grants franchise rights to the Indiana Bridge Company and on information and belief these defendants aver that the Act intended to be referred by the complainant in said paragraph 15 of its bill of com-

plaint is the Act of Congress referred to, approved March 2, 1927, set out in the amended bill of complaint filed by the complainant amending paragraph 30 of its original bill of complaint, but which amended bill of complaint did not amend said paragraph 15 of the original bill of complaint; and these defendants aver with respect to said last mentioned Act of Congress (Exhibit H to the amended bill of complaint) that all rights under said Act appertain to the State of Indiana, and that the State of Kentucky has no right under said Act, except as specifically provided in Section 5 of said Act, authorizing the State of Kentucky under certain terms, to acquire one-half interest in such bridge, whereupon the right to take tolls under said bridge shall immediately cease.

16. Said defendants admit that the Commonwealth of Kentucky and the State of Indiana have entered into a certain written contract dated September 12, 1928, as set forth in paragraph 16 of said bill of complaint, but said defendants allege and aver that said contract is invalid and entered into without authority of law, and that the laws of the State of Indiana did not authorize the entering into of such contract, and that said contract is void and of no force and effect, and not enforceable by the parties thereto, and that neither the State of Indiana nor officials of the State of Indiana have authority to spend moneys for the purposes provided in said contract.

17. Said defendants deny that said contract provided for immediate and continued performance of the covenants therein, until the bridge referred to therein has been completed and is ready for travel, but aver and allege that there is no time provided in said contract for the fulfillment of the terms thereof.

18. Said defendants do not have sufficient information to answer the allegations contained in paragraph 18

of said bill of complaint, and therefore neither admit nor deny the same but require strict proof thereof.

19. Said defendants admit that on September 28, 1928, there was filed a bill of complaint in the Superior Court of Marion County, Indiana, a court of general civil jurisdiction, as alleged in paragraph 19 of said bill of complaint, and said defendants admit that the purpose of said bill of complaint filed by them in said Superior Court of Marion County, Indiana, was to enjoin certain individuals who were also members of the highway commission of the State of Indiana, and certain officers of the State of Indiana from carrying out said contract, and that the theory of said complaint was that there is no authority in law under which Indiana could enter into the said contract, and that the same was void and of no force and effect; and said defendants further allege that the said bill of complaint was filed in the Superior Court of Marion County, Indiana on September 28, 1928 and prior to the filing of the bill of complaint herein and prior to any application for leave to file the bill of complaint herein, against members of the State Highway Commission of the State of Indiana, both individually and as members of such commission; and was also filed against the auditor and treasurer of the State of Indiana, and against the director of said State Highway Commission, and sought to enjoin payment of moneys by the State of Indiana, or officers of the State of Indiana, in carrying out said contract, on the grounds among others that there was no authority under the laws of the State of Indiana for the entering into of said contract, that the provisions of said contract were in violation of the express requirements of the laws of the State of Indiana, that the members of the State Highway Commission of Indiana had no authority under the laws of Indiana to enter into said contract, and that the treasurer and au-

ditor of the State of Indiana had no authority under the laws of Indiana to pay out money in the carrying out of said contract, that said contract being entered into without authority granted by the laws of Indiana and in violation thereof is illegal and void, and said bill of complaint prays that the carrying out of said illegal acts be enjoined and that said state officers be enjoined from approving warrants or vouchers for expenditures under said contract and from paying out any moneys in connection with said contract; and that the Commonwealth of Kentucky was not a party defendant to said bill of complaint.

20. The said defendants admit that the return day fixed in the summons issued in said cause in the Superior Court of Marion County, Indiana, was October 20, 1928; and the defendants further aver that a general answer was filed in said cause by all the defendants thereto on October 30, 1928, and that said Superior Court of Marion County, Indiana, had general jurisdiction of said cause, and that said cause is therein pending and undetermined.

21. The said defendants admit that the Commonwealth of Kentucky is not a defendant to said cause pending in the Superior Court of Marion County, Indiana, and said defendants aver that the Commonwealth of Kentucky has no right to enjoin the prosecution of said cause.

22. Said defendants are not informed as to whether the State of Indiana intends to perform the covenants of said contract until final adjudication by the Supreme Court of the State of Indiana of the proceedings instituted by said defendants in the Superior Court of Marion County, Indiana, and therefore neither admit nor deny the same but require strict proof thereof; and said defendants deny that any delay in the performance of

said contract by the State of Indiana, consequent upon the pendency of said proceeding in the Superior Court of Marion County, Indiana, constitutes a breach by the State of Indiana of its said contract.

23. Said defendants deny that the delay in the performance of said contract during the pendency of said proceedings in the Superior Court of Marion County, Indiana, constitutes a breach of said contract, and said defendants deny that thereby the Commonwealth of Kentucky will suffer great and irreparable damage and injury, and deny that the Commonwealth of Kentucky will have no adequate remedy at law or in equity to redress the wrong sustained by it because of such alleged breach of contract, and deny that the Commonwealth of Kentucky has no other adequate remedy than that of injunction against the State of Indiana to prevent such breach of said contract and to prevent these defendants, citizens of Indiana, from causing such breach by the State of Indiana; but on the contrary said defendants aver and allege that if the Commonwealth of Kentucky suffers damage by reason of any breach of a valid contract of the State of Indiana with the Commonwealth of Kentucky, said Commonwealth of Kentucky has a plain, adequate and complete remedy at law against the State of Indiana.

24. Said defendants deny that they will sustain no damages by reason of the performance by the State of Indiana of the covenants of said contract, and allege and aver that each of them is a citizen, voter and taxpayer of the State of Indiana, and an operator of an automobile, and that each of them pays taxes and also license fees for the operation of their automobiles, to the State of Indiana, and that the money thus paid by them will be unlawfully diverted by the State of Indiana, in carrying out said contract with the Commonwealth of Kentucky, and that the defendants therefore aver that

they were and are lawfully entitled under the laws of the State of Indiana to institute, prosecute and maintain said proceedings in the Superior Court of Marion County, Indiana.

25. Said defendants do not have sufficient information to answer the allegations contained in paragraph 25 of the bill of complaint, and therefore neither admit nor deny the same but require strict proof thereof.

26. Said defendants deny that the Commonwealth of Kentucky has any right or remedy in this court under its said bill of complaint, and deny that there is no remedy in the premises, except the relief sought by it in its bill of complaint.

27. The said defendants deny that the State of Indiana and the Commonwealth of Kentucky, by their respective Highway Commissions, had complete statutory authority to enter into said contract for the construction of said bridge referred to in said contract, and deny that the northern approaches to said bridge will rest on and extend over Indiana soil, but allege and aver that the entire bridge provided for in said contract, and its approaches, as such approaches are correctly defined and termed, is to be erected within the Commonwealth of Kentucky and will not be over the boundary line between said Commonwealth of Kentucky and the State of Indiana.

28. Said defendants deny each and all the allegations contained in paragraph 28 of said bill of complaint contained, except they admit that the copies of the Acts attached as exhibits and referred to in said paragraph 28, are the Acts therein mentioned.

29. Said defendants deny each and all the allegations contained in paragraph 29 of said bill of complaint contained, except they admit that the copies of the Acts at-

tached as exhibits and referred to in said paragraph 29, are the Acts therein mentioned.

30. The said defendants deny that said contract and its provisions were further authorized by the Acts of Congress referred to in paragraph 30 of said bill of complaint as said paragraph is amended by the amended bill of complaint filed herein.

31. Said defendants deny that any emergency exists for the issuance of a temporary injunction against the defendant citizens of Indiana to prevent them from prosecuting said cause instituted by them in the Superior Court of Marion County, Indiana, and deny that the Commonwealth of Kentucky will suffer any irreparable injury by the prosecution of said suit, and deny that the prosecution of said suit will be in violation of jurisdiction of this court; but, on the contrary said defendants expressly aver that under Section 265 of the Judicial Code of the United States this court is not authorized to issue any injunction against these defendants to restrain prosecution of said suit.

32. The said defendants deny that the breach of said contract by the State of Indiana will cause irreparable damage to the Commonwealth of Kentucky or to persons for which no adequate remedy at law exists; but on the contrary aver that the Commonwealth of Kentucky will have a plain, adequate and complete remedy at law for the breach of any valid contract between the State of Indiana and the Commonwealth of Kentucky; and the defendants further aver and allege that the Commonwealth of Kentucky has, therefore, no right to maintain any bill in equity.

33. Said defendants neither admit nor deny the allegations contained in paragraph 33 of said bill of complaint, but require strict proof thereof.

34. Said defendants deny that the General Assembly of the State of Indiana has made the necessary appropriation of money for the construction of said bridge, and deny that there is in the treasury of said State sufficient money to enable the officers of said State to perform said contract with the State of Indiana, available to the officers of said State for the purpose of performing said contract.

35. Said defendants do not have sufficient information to answer the allegations contained in paragraph 35 of said bill of complaint, and therefore neither admit nor deny the same but require strict proof thereof.

36. Said defendants deny that this court has any jurisdiction to decree the specific performance of the contract referred to in paragraph 36 of said bill of complaint by the State of Indiana, and allege and aver that no basis or ground exists under said bill of complaint or otherwise for the specific performance thereof.

37. Further answering, said defendants aver and allege that said contract set forth in said bill of complaint is in violation of the laws of the State of Indiana, in that, among other things, it undertakes:

(a) To bind the Highway Commission of the State of Indiana to join and co-operate with the Highway Commission of the Commonwealth of Kentucky, to build a highway bridge, not on the state boundary line but wholly within the Commonwealth of Kentucky, and across the Ohio River, at a point wholly within the Commonwealth of Kentucky;

(b) To bind said Highway Commission of the State of Indiana to contract for the building of such bridge, such contract not to be binding until it is approved by the State Highway Commission of Kentucky;

(c) To grant to the Commonwealth of Kentucky the exclusive right and privilege of fixing, charging

and collecting tolls from all persons using said bridge;

(d) To bind the Indiana State Highway Commission to sell, assign and convey an undivided one-half interest in said bridge without any consideration therefor from the Commonwealth of Kentucky or the State Highway Commission of Kentucky, except a temporary loan which is provided is to be paid back to the Commonwealth of Kentucky by tolls on said bridge collected by the Commonwealth of Kentucky;

(e) That the State Highway Commission of Kentucky agrees to furnish money for the construction of said bridge only out of bonds issued under Chapter 174 of the Acts of General Assembly, 1928, of the State of Kentucky;

(f) To bind the Indiana State Highway Commission to transfer, without authority of any statute all right and privilege of the State of Indiana to charge and collect tolls on said bridge, and to sell and assign to the Commonwealth of Kentucky, the ownership of said privilege and the right to collect said tolls, and to grant to the State Highway Commission of Kentucky the right to fix tolls and to retain all tolls until an amount is collected sufficient to retire all bonds that may be issued and sold by the Kentucky State Highway Commission, together with interest thereon;

(g) To waive the right of the Indiana State Highway Commission to fix or determine the amount, return or classification of said tolls, or to collect or receive said tolls as aforesaid;

(h) To waive the requirement that no part of the tolls collected is to be deposited in the state depositary designated by the Indiana State Highway Commission, nor to the credit of the treasurer of the State of Indiana as a toll fund to be used as required by the laws of the State of Indiana;

(i) To make no provision in said contract which is required by the laws of the State of Indiana under which the bridge shall become a free bridge, or for the reimbursement of money contributed by Vander-

burg County, Indiana, from moneys derived from tolls collected for said bridge or from any money furnished by the Commonwealth of Kentucky, or any adjoining state; but that said contract provides that the Commonwealth of Kentucky shall have the right to continue to collect tolls until bonds so issued by the Kentucky State Highway Commission, together with interest thereon and the cost of collecting such tolls and the cost of maintenance of such bridge shall have been paid;

(j) To require the Indiana State Highway Commission to execute, without authority of law, such instruments as may be required by the purchaser of any bonds issued by the Kentucky State Highway Commission to grant unto such purchaser a first and paramount lien on all tolls to be collected for the use of said bridge, and a first, superior and paramount lien on an undivided one-half interest of the State of Indiana in and to said bridge, and finally, without authority of the laws of the State of Indiana, to join with the Commonwealth of Kentucky in making and executing such further instruments as may reasonably be required to secure the payment of said bonds.

And the defendants further aver that Indiana State Highway Commission is a body created by an act of the legislature of the State of Indiana, and has no authority other than that specifically granted to it by acts of the legislature of the State of Indiana, and that the acts of the legislature of the State of Indiana do not authorize the entering into by said Indiana State Highway Commission of a contract containing the terms and provisions of said contract set forth in the bill of complaint herein.

Said defendants deny that complainant is entitled to any relief whatsoever or any part of the relief in said bill of complaint demanded, and allege that the complainant has not presented a controversy within the jurisdic-

tion of this court, and pray to be hence dismissed with their reasonable costs and charges.

JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL,
By FRED C. GAUSE,
Indianapolis, Indiana.
WALTER PRITCHARD,
Indianapolis, Indiana.
FRANK H. HATFIELD,
Evansville, Indiana.
LOUIS L. ROBERTS,
Evansville, Indiana.
Their Solicitors.

FILE COPY

FEB 18

CHARLES ELMO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928

[redacted] 8 [redacted] 7

No. [redacted] ORIGINAL.

IN EQUITY.

COMMONWEALTH OF KENTUCKY,

Complainant,

vs.

THE STATE OF INDIANA, AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, AND LESTER R. McCOOL, ALL CITIZENS OF THE STATE OF INDIANA,

Defendants.

BRIEF IN SUPPORT OF MOTION TO DISMISS BILL OF COMPLAINT.

FRED C. GAUSE,
Indianapolis, Indiana,
WALTER PRITCHARD,
Indianapolis, Indiana,
FRANK H. HATFIELD,
Evansville, Indiana,
LOUIS L. ROBERTS,
Evansville, Indiana,
Solicitors for Certain Defendants.

BLAKELY-WARREN PRINTING COMPANY, CHICAGO.

INDEX.

PAGE

Statement of the Case 1
Motion to Dismiss 7
Brief 9
Argument 11

CITATIONS.

Acts of Congress, March 2, 1927..... 2
Acts of Congress, March 3, 1927..... 2
Acts of Indiana, 1919.....9, 16, 18, 19
Acts of Indiana, 1927.....9, 16, 17, 18, 19
Acts of Kentucky, 1928 4
Chgo. N. W. Ry. Co. v. Minnesota, 134 U. S. 418 .....10, 24
Essaner v. Kane, 258 U. S. 358.....9, 15
Indiana v. Kentucky, 136 U. S. 553..... 17
Iowa v. Schlimmer, 248 U. S. 115.....9, 15
Joy v. R. R. Co. 138 U. S. 1..... 21
Judicial Code of the United States,
Section 265 .....9, 10, 13, 14, 24
Section 267 20
Mo. Pac. R. R. v. Nebraska, 164 U. S. 403,....10, 24
Moran v. Storges, 154 U. S. 256.....9, 15
Pomeroy on Equity Jurisprudence (3rd. Ed.)
Sec. 23 .....10, 21
Rutland Marble Co. v. Ripley, 10 Wall.....10, 23
Sargent v. Hilton, 115 U. S. 348, 350.....9, 15
Texas & Pac. Ry. Co. v. Marshall, 136 U. S. 393 .....9, 10, 20, 22
Tullis v. R. R. 175 U. S. 348.....10, 24

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 18. Original.

IN EQUITY.

COMMONWEALTH OF KENTUCKY,
Complainant,

vs.

THE STATE OF INDIANA, AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, AND LESTER R. McCOOL, ALL CITIZENS OF THE STATE OF INDIANA,
Defendants.

BRIEF IN SUPPORT OF MOTION TO DISMISS BILL OF COMPLAINT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

STATEMENT OF THE CASE.

A bill of complaint herein has been filed by the Commonwealth of Kentucky against the State of Indiana and against various individual defendants, all citizens of Indiana, and which individual defendants have filed

a motion to dismiss the bill of complaint herein. The bill of complaint alleges that the Commonwealth of Kentucky and the State of Indiana, acting through their respective State Highway Commissions entered into an agreement dated September 12, 1928, for the construction of a bridge across the Ohio River, near Evansville, Indiana, a complete copy of which agreement is set forth on pp. 8-31 in the original bill of complaint. The original bill of complaint alleges that the bridge referred to in the contract is for the purpose of connecting highway systems and that the bridge was to be constructed under a certain Act of Congress approved March 3, 1927 (Exhibit H to the bill of complaint, p. 101), granting the right to the Indiana Bridge Company to construct a bridge across the Ohio River, at or near Evansville, Indiana. This Act of Congress was referred to in paragraphs 15 and 30 of the bill of complaint. An amended bill of complaint was later filed, amending paragraph 30 of the bill of complaint (bill of complaint p. 37), alleging that said Act of Congress of March 3, 1927 was erroneously referred to in the original bill of complaint, and that an Act of March 2, 1927 (Exhibit H to the amended bill of complaint) was intended to be referred to in paragraph 30 of the bill of complaint. Paragraph 15 of the original bill of complaint (which was not thus amended) states that by the Act approved March 3, 1927 (Exhibit H to the original bill of complaint, p. 101 of bill of complaint) Congress authorized the State of Indiana to construct a bridge. This Act, however, does not grant any right to the State of Indiana, but does grant certain rights to the Indiana Bridge Company, and we assume, for the purposes of this motion, that the Act intended to be referred to in para-

graph 15 of the bill of complaint was the Act set forth in the amended bill of complaint.

The contract for the construction of a bridge, between the Highway Commissions of the two States (bill of complaint, pp. 8-31), provides that Indiana, through its State Highway Commission, "shall, as soon as practicable, and subject to the approval of the Kentucky State Highway Commission, enter into a contract or contracts for the construction of said bridge" (p. 17), and that such contract shall not be binding until approved by the Kentucky State Highway Commission. The contract also provides that a bridge shall be constructed across the Ohio River, between Evansville, Indiana, and Henderson, Kentucky, at points designated, plans and specifications for which are to be prepared by the Indiana State Highway Commission and approved by the Kentucky State Highway Commission; that the State of Indiana shall pay for the work as it progresses and bill the Kentucky State Highway Commission for one-half the amounts so paid from time to time, such bills to be paid by Kentucky from funds derived by it from the sale of bonds; that Kentucky, through its Highway Commission, agrees to purchase, under the terms of the contract, a one-half undivided interest in such bridge, except the right of charging and collecting tolls, such right and privilege to belong exclusively to Kentucky until it has been reimbursed therefrom for the amount expended by it; that the rights of way and approaches for the bridge within Kentucky shall be acquired by Kentucky, and the rights of way and approaches in Indiana shall be acquired by Indiana; that highways in each of the States shall be maintained from primary highways in said States, to connect with the bridge as constructed; that Indiana agrees to sell to Kentucky an easement and its interest in the bridge, including any part of the ap-

proaches in Indiana; and in like manner Kentucky agrees to sell an easement and interest in the bridge and approaches in Kentucky to Indiana; that Kentucky shall sell a sufficient number of bonds to be issued under authority of Chapter 172 of the 1928 Acts of Kentucky to provide a sum of money equal to one-half of the estimated cost of the bridge; that when the bridge shall have been completed, Kentucky shall pay to Indiana any balance due the State of Indiana for one-half the cost of construction, less One Thousand Dollars ($1,000), such latter amount to be paid when a sufficient amount of tolls shall have been collected by Kentucky to pay the cost of collection and the cost of maintenance, and to pay said bonds which may have been issued by Kentucky, at which time said balance of One Thousand Dollars ($1,000) shall be paid by Kentucky to Indiana, and Kentucky shall thereupon be vested with a full one-half undivided title and interest in the bridge; that Indiana will sell to Kentucky all rights granted to Indiana by said Act of Congress to collect tolls, including full ownership of such tolls as may be collected, and that the full amount of such tolls may be used by Kentucky; that the rates of tolls are to be fixed by the Kentucky State Highway Commission, subject to the laws of the United States, and during the period of collection of tolls the structure shall be maintained by Kentucky; that Indiana shall join with Kentucky in the execution of any instruments required by the purchaser of bonds issued by Kentucky to give such purchaser a first lien on tolls collected for the use of the bridge, and a first lien on a one-half undivided interest in the bridge, and Indiana shall also join with Kentucky in executing such further assurances as may be reasonably required to secure the payment of bonds. The legislative Acts under which it is alleged that authority is given to the respective States

to enter into said contract are set forth as exhibits to the original bill of complaint filed herein.

The bill of complaint alleges that on September 28, 1928, individual defendants to the bill of complaint filed their complaint as plaintiffs in the Marion Superior Court of Marion County, a court of general civil jurisdiction in the State of Indiana, against members of the Indiana State Highway Commission and other officers of the State of Indiana, and that the purpose of such complaint was to enjoin such defendant officials of the State of Indiana from performing the covenants of said contract, and that the theory of such complaint in the Marion Superior Court was that there was no authority in law under which Indiana could enter into said contract, and that said contract was void and of no force and effect (bill of complaint, pp. 31-32). It appears from the return of a rule to show cause filed by the individual defendants herein (Exhibit A hereto attached), that a general answer has been filed in said Marion Superior Court by all the defendants therein. The bill of complaint herein alleges that Kentucky is not a defendant to said suit in the Marion Superior Court (p. 32), that Indiana will not perform its contract until final adjudication of said cause in the Marion Superior Court of Indiana, and that if such final adjudication should be adverse, the State of Indiana intends not to perform its contract (p. 33); that the prosecution of said litigation in said Marion Superior Court will cause a breach of said contract by Indiana, that such breach will cause a delay of at least a year in the completion of the bridge and the time when it would be available for use, and that thereby irreparable damage and injury would be caused to Kentucky (p. 34), and that it would, therefore, have no adequate remedy other than that of injunction to prevent the breach of said contract and to prevent said

defendants, the plaintiffs in said Marion Superior Court, from causing such breach by such litigation. The bill of complaint also alleges that an emergency exists for the issuance of a temporary injunction against the individual defendants herein to prevent them from prosecuting said cause instituted by them in the Marion Superior Court, and (p. 40) that Indiana "will, if permitted by the Courts, perform the covenants of said contract on its part to be performed according to its terms, and said State will perform all of said covenants of said contract, if this Honorable Court decrees specific performance thereof." The bill prays (pp. 38-39) for an injunction to restrain Indiana from breaching the contract, and to restrain individual defendants to this bill of complaint from prosecuting said suit instituted in the Superior Court of Marion County, Indiana, and (p. 41) for a decree of specific performance of said contract by Indiana.

Indiana has filed an answer to the bill of complaint in which it states that the only excuse which it offers for failure to perform said contract is the litigation instituted by the individual defendants to this bill of complaint, and that inasmuch as the validity of said contract and its performance involves the expenditure of several millions of dollars of public moneys belonging to Indiana, it does not feel warranted in proceeding with the performance thereof until there is a final adjudication establishing its right to perform the contract against the challenge of such rights made in such litigation in said state court; and the answer also sets forth that if the court will grant the relief prayed, Indiana will immediately proceed with the performance of the covenants.

The individual defendants to the bill of complaint have filed herein their motion to dismiss the bill of complaint on the following grounds:

(1) It appears from the bill of complaint and the answer thereto filed by the State of Indiana that there is no controversy between the Commonwealth of Kentucky and the State of Indiana.

(2) It appears from the bill of complaint that there is no controversy between the Commonwealth of Kentucky and the individual defendants to the bill of complaint.

(3) That the only effective relief sought by the complainant, Commonwealth of Kentucky, is an injunction enjoining prosecution by the individual defendants to this bill of complaint of a suit (which does not in any way relate to proceedings in bankruptcy) instituted by such individual defendants in the Superior Court of Marion County, Indiana, a court of general civil jurisdiction of the State of Indiana; and whereas, by Section 265 of the Judicial Code of the United States, it is provided that a writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state except in cases where such an injunction may be authorized by any law relating to proceedings in bankruptcy.

(4) It appears from the bill of complaint filed herein that the theory of the complaint in said suit pending in the Superior Court of Marion County, Indiana, is that there is no authority under the laws of the State of Indiana, under which the State of Indiana could enter into the contract set out in the bill of complaint, and that such contract is void and of no effect, thereby disclosing that said proceedings involved the interpretation of the statutes and laws of the State of Indiana.

(5) That the contract between the Commonwealth of Kentucky and the State of Indiana, set forth in the bill of complaint, is not binding on the State of Indiana, and

is entered into without authority of law, and is unenforceable against the State of Indiana.

(6) That the Commonwealth of Kentucky is not entitled to any relief in equity, inasmuch as it has a plain, adequate and complete remedy at law.

BRIEF.

I.

THE BILL OF COMPLAINT PRESENTS NO CONTROVERSY BETWEEN TWO STATES OR BETWEEN A STATE AND ANOTHER STATE AND CITIZENS OF ANOTHER STATE.

II.

THE BILL OF COMPLAINT SEEKS AN INJUNCTION TO STAY PROCEEDINGS INSTITUTED BY INDIVIDUAL DEFENDANTS HEREIN IN A STATE COURT OF GENERAL JURISDICTION; WHEREAS, UNDER SECTION 265 OF THE JUDICIAL CODE OF THE UNITED STATES SUCH INJUNCTION IS PROHIBITED.

Section 265, U. S. Judicial Code.

Moran v. *Storges*, 154 U. S. 256, 268.

Iowa v. *Schlimmer*, 248 U. S. 115.

Sargent v. *Hilton*, 115 U. S. 348, 350.

Essaner v. *Kane*, 258 U. S. 358, 360.

III.

THE CONTRACT BETWEEN KENTUCKY AND INDIANA, SET FORTH IN THE BILL OF COMPLAINT, HAS BEEN ENTERED INTO BY THE STATE HIGHWAY COMMISSION OF INDIANA WITHOUT AUTHORITY AND IS UNENFORCEABLE AGAINST INDIANA.

Acts of Indiana, 1927.

Acts of Indiana, 1919.

IV.

KENTUCKY HAS A PLAIN, ADEQUATE AND COMPLETE REMEDY AT LAW FOR ANY BREACH OF THE CONTRACT BETWEEN KENTUCKY AND INDIANA, AND IS, THEREFORE, NOT ENTITLED TO MAINTAIN A BILL IN EQUITY.

Texas & Pac. R. R. Co. v. *Marshall*, 136 U. S. 393.

V.

IN SO FAR AS THE BILL OF COMPLAINT PRAYS FOR A DECREE OF SPECIFIC PERFORMANCE, SUCH DECREE WOULD REQUIRE ACTION BY POLITICAL AND LEGISLATIVE AUTHORITY OF ANOTHER STATE, AND THIS COURT WOULD NOT ORDINARILY UNDERTAKE SUCH AUTHORITY; AND MOREOVER A COURT WILL NOT DECREE SPECIFIC PERFORMANCE OF A BUILDING AND CONSTRUCTION CONTRACT SUCH AS THAT HERE INVOLVED FOR THE CONSTRUCTION OF A BRIDGE AND PRAYER FOR A DECREE RESTRAINING INDIANA FROM FAILING TO PERFORM THE CONTRACT IS IN EFFECT MERELY A PRAYER FOR A DECREE OF SPECIFIC PERFORMANCE.

Pomeroy on Equity Jurisprudence (3rd Ed.), Sec. 23.

Texas & Pac. R. R. Co. v. *City of Marshall,* 136 U. S. 393.

Rutland Marble Co. v. *Ripley,* 10 Wall. 339.

VI.

THE ONLY EFFECTIVE RELIEF SOUGHT BY THE BILL OF COMPLAINT IS AN INJUNCTION TO STAY PROCEEDINGS IN A LOCAL STATE COURT ATTACKING THE VALIDITY OF THE CONTRACT AND THE RIGHT OF OFFICERS OF THE STATE OF INDIANA TO DISBURSE FUNDS IN CARRYING OUT THE CONTRACT INVOLVING THE INTERPRETATION OF THE INDIANA LAW WITH RESPECT TO WHICH A DECISION OF THE SUPREME COURT OF INDIANA WOULD BE FINAL.

Section 265, U. S. Judicial Code.

Tullis v. *R. R.* 175 U. S. 348.

Mo. Pac. R. R. v. *Nebraska,* 164 U. S. 403.

Chgo. N. W. Ry. Co. v. *Minnesota,* 134 U. S. 418

ARGUMENT.

I.

THE BILL OF COMPLAINT PRESENTS NO CONTROVERSY BETWEEN TWO STATES OR BETWEEN A STATE AND ANOTHER STATE AND CITIZENS OF ANOTHER STATE.

The bill of complaint alleges (pp. 2-3) that the action is brought in this court in the exercise of the original jurisdiction of this court on the ground that it is an action in equity relating to a controversy between two states of the United States and also between Kentucky as a state and citizens of Indiana, as another state. The bill of complaint also alleges (p. 31) that Indiana and its officers "are now ready, able and anxious to perform said contract, and would do so but for certain litigation which has arisen involving the legality of said contract between citizens of Indiana and the officers of said State whose function it is to perform the covenants of said contract for the State of Indiana on its part to be performed." Again the bill of complaint alleges (p. 40) that "the State of Indiana will, if permitted by the Courts, perform the covenants of said contract on its part to be performed according to its terms, and said State will perform all of said covenants of said contract if this Honorable Court decrees specific performance thereof." The answer filed herein by Indiana states that

> "the only excuse which the State of Indiana offers for failure to perform said contract, set out in the plaintiff's complaint, is the litigation mentioned in the complaint, instituted by her above named co-defendants against the officers of the State of Indiana whose function it is to perform said contract * * *; but inasmuch as the validity of said contract has been drawn in question by the litigation aforesaid in one of the courts of the State of Indiana, and, in-

> asmuch as performance of the contract involves the expenditure of several millions of dollars of public moneys belonging to the State of Indiana, it does not feel warranted in proceeding further with performance thereof until there is a final adjudication establishing the right of the State of Indiana to perform the contract against the challenge of such right as made in the litigation in said state court. The State of Indiana believes said contract is valid."

This answer also states that if this Court shall grant the relief prayed against Indiana by Kentucky, Indiana will thereupon immediately proceed with the performance of said contract and will continue such performance until the object of the contract has been fully attained, as contemplated by the terms thereof.

It seems evident from the allegations of the complaint and answer of Indiana that there is no controversy between Indiana and Kentucky. Indiana acknowledges the validity of the contract and is willing to perform its terms, but states that it does not feel warranted in proceeding with the performance thereof until there is a final adjudication as against the challenge made in the pending litigation in the Superior Court of Marion County, Indiana.

The contract itself contains no limitation date for performance thereof, nor does it provide that time is the essence of the contract, nor does it fix any dates for the performance of any of the provisions thereof. The mere fact that Indiana is unwilling to proceed until the validity of the contract challenged in the pending litigation in the Superior Court of Marion County, Indiana, is determined does not constitute a breach of such a contract; and inasmuch as both the bill of complaint and the answer state that Indiana is willing to perform the contract in accordance with the terms thereof, there can be no controversy between the two States which would authorize

the institution of this action in the Supreme Court on the ground of a controversy between two states of the United States; nor is there any controversy between the State of Kentucky and citizens of the State of Indiana. The individual defendants to this bill of complaint are the plaintiffs in the pending litigation in the lower Indiana Court, and Kentucky is not a party to such litigation. There is no contractual or other obligation between the individual defendants and Kentucky nor can there be any claim by Kentucky that such defendants by instituting the litigation in the Marion Superior Court in any way violated any rights of Kentucky. Whatever relief is sought by Kentucky against the individual defendants herein is one purely to restrain action in the state court by such individual defendants in order to obviate the allegation of Indiana that it is unwilling to proceed with the contract until such litigation is disposed of. If there is, therefore, no actual controversy between the two States or between Kentucky and these individual defendants, the jurisdiction of this court falls and the action cannot be maintained.

II.

THE BILL OF COMPLAINT SEEKS AN INJUNCTION TO STAY PROCEEDINGS INSTITUTED BY INDIVIDUAL DEFENDANTS HEREIN IN A STATE COURT OF GENERAL JURISDICTION; WHEREAS, UNDER SECTION 265 OF THE JUDICIAL CODE OF THE UNITED STATES SUCH INJUNCTION IS PROHIBITED.

The only relief sought in the bill of complaint against these individual defendants is for an injunction to restrain prosecution by the individual defendants of the pending suit in the Superior Court of Marion County, Indiana, against persons who are members or officers of the Indiana State Highway Commission and officers of

the State of Indiana. Section 265 of the Judicial Code of the United States provides that

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

The limitation upon the power of the Federal Courts embraced in this section of the Judicial Code has been in effect since 1793 (1 U. S. Stats. at Large 333, 335), and it has been held that it applies to the Supreme Court as well as to the Federal *nisi prius* courts (*Slaughter-House Cases*, 10 Wall. 273). It may, perhaps, not apply where the Federal Court first obtained jurisdiction over the subject matter in certain classes of cases, but with respect to this case, the proceedings in the Superior Court of Marion County, Indiana, were instituted on September 28, 1928, long prior to the filing of the bill of complaint in this case, and long prior to application for leave to file the bill of complaint herein. In fact, the only effective relief sought in the entire bill of complaint is the injunction which is asked against prosecution of the suit in the lower Indiana Court by individual defendants to the bill of complaint herein. The injunction sought against Indiana to restrain it from not performing the contract is in effect a prayer for specific performance of the contract, the provisions of which contract are such that equity courts will not ordinarily decree specific performance thereof. Moreover, there is no unwillingness on the part of Indiana, evidenced in the allegations of the complaint and its answer, to perform the contract, except the challenge made as to the validity of the contract under the laws of Indiana, in such litigation pending in the lower Indiana Court. Any question as to validity of the contract under the Indiana Laws and interpretation of Indiana Statutes is one pe-

culiarly without the province of the courts of Indiana, and a decision of the Supreme Court of Indiana as to authority of state officers under Indiana laws, will be final and conclusive.

In *Moran* v. *Storges,* 154 U. S. 256, 268, this Court said that "the general rule is that a state court cannot enjoin proceedings in courts of the United States * * * while on the other hand it was determined that the Circuit Court could not enjoin proceedings in a state court, and any attempt of that kind was forbidden by the Act of Congress."

In *Iowa* v. *Schlimmer,* 248 U. S. 115, where the State of Iowa sought to file suit against the State of Minnesota and certain individual citizens of other states than Iowa to recover taxes on property of a decedent, objection was made to the filing of the bill on the ground that the only effective relief was an injunction sought against a proceeding in the state court which was administering the estate, and this court held that the only effective relief was to enjoin further administration of the estate by the Minnesota courts, and that could not be done and the request to file the complaint was denied.

In *Sargent* v. *Hilton,* 115 U. S. 348, 350, this court said that "the sole purpose of the bill in this case was to restrain the execution of an order of the Circuit Court for the County of Escambia, a court of the State of Alabama; and no relief which, upon the averments of the bill, this court could grant would be effectual without the writ of injunction prayed for. The Circuit Court of the United States was therefore deprived of power, by the section just quoted, to protect the rights of the plaintiff, unless a writ of injunction was authorized by the law relating to proceedings in bankruptcy."

In *Essaner, etc.* v. *Kane,* 258 U. S. 358, 360, this court

has held that the statute prohibiting United States courts from granting injunctions to stay proceedings in state courts is based on principles of comity and is designed to avoid inevitable and irritating conflicts of jurisdiction.

If this court, therefore, cannot restrain the prosecution of the suit in the lower court of Indiana, any decree entered by this court, whether of specific performance against Indiana, or to restrain Indiana from breaching the contract, would not be effectual against any final decree entered by the Indiana courts interpreting the laws of the State of Indiana to be such that there would be no authority for the officers of the State of Indiana to disburse moneys under the contract, or to carry out its provisions as the Supreme Court of Indiana would be the final arbiter of the interpretation of the Indiana statutes.

III.

THE CONTRACT BETWEEN KENTUCKY AND INDIANA, SET FORTH IN THE BILL OF COMPLAINT, HAS BEEN ENTERED INTO BY THE STATE HIGHWAY COMMISSION OF INDIANA WITHOUT AUTHORITY AND IS UNENFORCEABLE AGAINST INDIANA.

The right of the members and director of the Indiana State Highway Commission to enter into the contract must be based upon authority expressly conferred by the legislative acts of the State of Indiana. The bill of complaint alleges (p. 36) that such authority is based upon Chapter 10 of the Acts of 1927 (bill of complaint, pp. 43-56) and Chapter 53 of the Acts of 1919 (bill of complaint, pp. 57-86).

We believe it is evident from an examination of these acts and the contract, that provisions of the contract entered into by the Indiana State Highway Commission

with the Kentucky State Highway Commission for the construction of said bridge are in direct violation of specific provisions of the Indiana acts above mentioned.

The contract binds Indiana, through its State Highway Commission, to construct a bridge across the Ohio River between Evansville, Indiana and Henderson, Kentucky, at a point designated in the plans and specifications to be provided for (bill of complaint, p. 16). Although the bill of complaint alleges that the northern approaches of said bridge will rest on and extend over Indiana soil (bill of complaint, p. 36), and it is alleged that the bridge structure proper will span the water of the Ohio River (bill of complaint, p. 36), we believe it is apparent from the decision in the case of *Indiana* v. *Kentucky,* 136 U. S. 553, that the boundary line of the State of Kentucky near Evansville, Indiana extends north of the Ohio River and that the bridge structure will be entirely within the State of Kentucky.

The 1927 Indiana Act (p. 43, Section 1) gives authorization to the State Highway Commission to construct a highway bridge

> "over and across any river or other stream forming the boundary line between the State of Indiana and any state adjoining the State of Indiana * * * whenever such bridge, or any part thereof, including the approaches thereto, as a part thereof, will be within the State of Indiana."

An approach to a bridge should not include a highway connecting a bridge structure with another highway, but should only include the elevation proper to reach the bridge. The contract attempts to define approaches (bill of complaint, p. 27) as including pavements and rights of way from a point on the Indiana side of the river, but such definition of approaches cannot properly be used to extend the ordinary meaning of the term approaches (viz.: as the elevation proper to reach the

bridge from grade). The contract attempts to bind the Indiana State Highway Commission to contract for the building of a bridge, such contract not to be binding until approved by the Kentucky State Highway Commission (bill of complaint, p. 17). The 1927 Indiana Act provides for the construction of a bridge by the Indiana Highway Commission, but there is no provision, either in the 1927 Indiana Act or in the 1919 Indiana Act, permitting the Highway Commission to enter into a contract which is not binding until approved by the State Highway Commission of another state. Indiana, by the contract, transfers to Kentucky the right to fix the tolls (bill of complaint, p. 24, par. 19), and also the ownership of such collected tolls until Kentucky shall have received a sufficient amount to reimburse it for the amount required to pay or retire any bonds which may have been issued by it (bill of complaint, pp. 24-25).

The 1927 Indiana Act, Section 11 (bill of complaint, p. 50) specifically provides that the Indiana State Highway Commission shall charge tolls for the use of any bridge constructed under the provisions of the act, and "shall fix and establish the rates of toll to be paid for the use of such bridge." Section 12 of the same act (bill of complaint, p. 51) provides that "all tolls collected by said toll collectors shall be deposited daily in some state depository designated by said state highway commission, to the credit of the treasurer of state of the State of Indiana as a toll fund to be used and disbursed as provided for in this Act." Section 17 of the 1927 Indiana Act (bill of complaint, pp. 42-53) provides that the amount of such toll fund remaining after the expense of collecting such tolls shall be divided equally between the State of Indiana and the county in said state which has issued the bonds in aid of said bridge from which the tolls were derived, until *each said state and*

said county has received back an amount equal to the amount contributed by the county to said bridge, together with interest thereon up to the time of repayment, and that such net tolls shall be used for no other purpose.

There is no provision in the 1927 Indiana Act authorizing the Indiana State Highway Commission to sell or transfer to another state, or to any highway commission of another state, the right to tolls in connection with a bridge constructed under the provisions of such act, nor is there any provision in said contract for the payment from the tolls of any moneys that may be furnished for the construction of the bridge by any county in the State of Indiana.

The contract also provides for the assignment and transfer to Kentucky of an undivided one-half interest in the bridge, and a proportionate interest in the bridge, as from time to time payments are made by Kentucky toward the cost of construction. Section 19 of the 1927 Indiana Act (bill of complaint, p. 54) authorizes the Indiana State Highway Commission to cooperate with and enter into a contract or contracts with adjoining states "to provide for the payment by such adjoining state of such part of the cost of the construction of such bridge, not exceeding one-half thereof, as may be agreed upon in such contract; and in such contract to also agree upon and determine the time and manner of making by such adjoining state of such payment or payments, and all other details in connection therewith." Under Section 20 of the same act (bill of complaint, p. 55), the State of Indiana is authorized to transfer a proportionate interest in the bridge to an adjoining state, under certain terms and conditions; but there is no provision in the 1927 Indiana Act, nor in the 1919 Indiana Act authorizing Indiana to grant to any person as the

contract provides (bill of complaint, p. 26) a lien on tolls collected on said bridge and on the undivided one-half interest in the bridge.

The contract, therefore, in many particulars violates the Indiana laws, and is unforceable against the State of Indiana.

IV.

KENTUCKY HAS A PLAIN, ADEQUATE AND COMPLETE REMEDY AT LAW FOR ANY BREACH OF THE CONTRACT BETWEEN KENTUCKY AND INDIANA, AND IS, THEREFORE, NOT ENTITLED TO MAINTAIN A BILL IN EQUITY.

Kentucky is attempting to enforce specific performance of a contract to build and construct a bridge, and to enter into contracts for the construction of a bridge, As before stated, there is no time limit fixed in the contract for the fulfillment thereof, or any conditions thereof by the State of Indiana. If the contract is a valid contract, and there is a breach in the contract by the State of Indiana, Kentucky will have a plain, adequate, and complete remedy at law for damages occasioned to it by nonfulfillment of the contract.

Section 267 of the Judicial Code of the United States specifically provides that "Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate, and complete remedy may be had at law."

If there is a breach of a valid contract, Kentucky could enter suit in this court against Indiana for damages. Such damages would cover the pecuniary loss which might be sustained by Kentucky in any action which it may have taken in proceeding with the carrying out of its part of the contract. This court held substantially to this effect in the case of *Texas and Pacific Railway Co.* v. *Marshall,* 136 U. S. 393.

V.

IN SO FAR AS THE BILL OF COMPLAINT PRAYS FOR A DECREE OF SPECIFIC PERFORMANCE, SUCH DECREE WOULD REQUIRE ACTION BY POLITICAL AND LEGISLATIVE AUTHORITY OF ANOTHER STATE, AND THIS COURT WOULD NOT ORDINARILY UNDERTAKE SUCH AUTHORITY; AND MOREOVER A COURT WILL NOT DECREE SPECIFIC PERFORMANCE OF A BUILDING AND CONSTRUCTION CONTRACT SUCH AS THAT HERE INVOLVED FOR THE CONSTRUCTION OF A BRIDGE; AND PRAYER FOR A DECREE RESTRAINING INDIANA FROM FAILING TO PERFORM THE CONTRACT IS IN EFFECT MERELY A PRAYER FOR SPECIFIC PERFORMANCE.

The bill of complaint (p. 41) prays for a decree of specific performance of the contract by the State of Indiana, and also prays (p. 38) for an injunction restraining Indiana from breaching the contract by refusing to perform the same, or any part thereof.

The general rule is well stated in *Pomeroy* on *Specific Performance of Contracts* (3rd Ed. Sec. 23, p. 61) as follows:

> "The general rule is now well settled that, on account of the great difficulty and often impossibility attending a judicial superintendence and execution of the performance, contracts for the erection or repair of buildings, the construction of works, and the conduct of operations requiring time, special knowledge, skill and personal oversight will not be specifically enforced."

Even in contracts which have been specifically enforced (such as *Joy* v. *St. Louis*, 138 U. S. 1), the contract has sufficiently definitely determined the nature of the work to be done. In the present case there is no definiteness whatsoever, and all that is provided for is a bridge to be built under plans and specifications not determined, so that even the definite location of the bridge is undetermined. The principal exception to the

general rule established in this country is apparently the purely arbitrary exception in favor of operating contracts of railroads, as in the Joy Case above mentioned. The present case, however, presents the further difficulty in the entering of a decree for specific performance, in that it would require specifically appropriation of public moneys and expenditure of public moneys by state officials of Indiana, and the appropriation of moneys by the Legislature of Indiana for the purpose of constructing the bridge. It nowhere appears in the bill of complaint that the State of Kentucky has sold its bonds, or has moneys available to pay its proportionate cost of construction of a bridge. A decree for specific performance should proceed equally against both parties to the contract.

In *Texas and Pacific Railway Company* v. *the City of Marshall,* 136 U. S. 393 (1890), where the City of Marshall, Texas sought a decree to restrain the railway company from removing certain offices and property from the City of Marshall, and to compel it to perform its contract to establish the eastern terminus of its railroad in the City of Marshall, this court held that the complainant, City of Marshall, was not entitled to any relief in a court of equity, saying:

> "If the court had rendered a decree restoring all the offices and machinery and appurtenances of the road which have been removed from Marshall to other places, it must necessarily superintend the execution of the decree. It must be making constant inquiry as to whether every one of the subjects of the contract which have been removed has been restored. It must consider whether this has been done perfectly and in good faith, or only in an evasive manner. It must be liable to perpetual calls in the future for like enforcement of the contract, and it assumes, in this way, an endless duty, inappropriate to the functions of the court, *which is as ill calculated to do this as it is to supervise and enforce*

a contract for building a house or building a railroad, both of which have in this country been declared to be outside of its proper functions, and not within its powers of specific performance."

The court, in this case, also said:

"This question was very fully considered, in reference to a contract for building a railroad, in the case of *Ross.* v. *Union P. R. Co.* 1 Woolw. 26, in which nearly all the authorities up to that time are fully considered. *It was decided that the court could not enter upon the duty of compelling one party to build a railroad and the other party to pay for it according to contract.* See also *Port Clinton R. Co.* v. *Cleveland & T. R. Co.* 13 Ohio St. 544; *South Wales R. Co.* v. *Wythes,* 5 DeG. M. & G. 880; *Powell Duffryn S. C. Co.* v. *Taff Vale R. Co. L. R.* 9 Ch. App. 331."

The court, in this case, also held that any injury suffered by the city, from violation by the railroad company of its contract, would constitute an action at law.

The court, in *Rutland Marble Co.* v. *Ripley,* 10 Wall. 339, held that where a contract is incapable of being enforced against one party, that party is equally incapable of enforcing it specifically against the other, and in the course of its opinion this court quoted from Story's Equitable Jurisprudence as follows:

"In cases of covenants and other contracts, where a specific performance is sought, it is often material to consider how far the reciprocal obligations of the party seeking the relief have been fairly and fully performed. For, if the latter have been disregarded, or they are incapable of being substantially performed on the part of the party so seeking relief, or from their nature they have ceased to have any just application by subsequent events, or it is against public policy to enforce them, courts of equity will not interfere."

VI.

THE ONLY EFFECTIVE RELIEF SOUGHT BY THE BILL OF COMPLAINT IS AN INJUNCTION TO STAY PROCEEDINGS IN A LOCAL STATE COURT ATTACKING THE VALIDITY OF THE CONTRACT AND THE RIGHT OF OFFICERS OF THE STATE OF INDIANA TO DISBURSE FUNDS IN CARRYING OUT THE CONTRACT INVOLVING THE INTERPRETATION OF THE INDIANA LAW WITH RESPECT TO WHICH A DECISION OF THE SUPREME COURT OF INDIANA WOULD BE FINAL.

Inasmuch as under Section 265 of the Judicial Code of the United States an injunction cannot issue restraining the prosecution of the pending suit in the Indiana state courts there could be no decree that would be entered in court that would be effective as to any action that may be taken by the officers of the State of Indiana. This court ordinarily and as a general rule always follows the decisions of the court of the state involving the interpretation of state statutes where no federal constitutional question is involved.

Tullis v. *R. R.* 175 U. S. 348; *Missouri Pacific R. R. Co.* v. *Nebraska,* 164 U. S. 403, *Chicago etc. Railway Co.* v. *Minnesota,* 134 U. S. 418.

Inasmuch as there is now pending in the Indiana state courts of general jurisdiction a case involving the interpretation of Indiana statutes, as to which the opinion of the Supreme Court of Indiana would be final, there is now no occasion for this court to attempt to interpret such statutes.

Respectfully submitted,

FRED C. GAUSE,
Indianapolis, Indiana,
WALTER PRITCHARD,
Indianapolis, Indiana,
FRANK H. HATFIELD,
Evansville, Indiana,
LOUIS L. ROBERTS,
Evansville, Indiana,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. ORIGINAL.

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - - *Complainant,*

vs.

THE STATE OF INDIANA, AND
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL, ALL CITIZENS OF THE STATE OF INDIANA, - - - - - - *Defendants.*

INDEX OF POINTS AND AUTHORITIES.

PAGES

STATEMENT 1–9

1. The only effective relief sought by complainant is not an injunction to stay a pending proceeding in the Marion Superior Court, Marion County, Indiana 10–12

Arkansas v. State of Tennessee, 246 U. S. 158.
Judicial Code, sections 263 and 265.

PAGES

2. **The Marion Superior Court, of Marion County, Indiana, does not have jurisdiction to determine the legality of the contract** 12, 13

3. **The tendered bill of complaint presents a "case" and "controversy" between the Commonwealth of Kentucky and the State of Indiana, and citizens of the State of Indiana, within the original jurisdiction of this Court under the provisions of Article III, section 2, of the Constitution of the United States and Section 233 of the Judicial Code** 14–31

Constitution of the United States, Article III (3), section 2.
Foster and Elam v. Neilson, 2 Peters, 253, 309, 314.
In Re Ayers, *et al.*, 123 U. S. 443, 492.
Judicial Code, section 233.
Kansas v. Colorado, 185 U. S. 125, 140, 146-147.
Kansas v. Colorado, 206 U. S. 46, 85, 97.
Louisiana v. Texas, 176 U. S. 1, 15.
Missouri v. Illinois, *et al.*, 200 U. S. 496, 519.
Missouri v. Illinois and the Sanitary District of Chicago, 180 U. S. 208, 240-241.
Muskrat v. United States, 219 U. S. 346, 356-357.
Oklahoma v. Atchison, Topeka and Sante Fe Railway Co., 22 U. S. 277, 288.
Pennsylvania v. Wheeling and Belmont Bridge Co., *et al.*, 13 Howard, 519, 566.
Rhode Island v. Massachusetts, 12 Peters, 657, 720, 731-732, 735, 743.
South Dakota v. North Carolina, 192 U. S. 286, 312, 314, 316, 318.
United States v. Texas, 143 U. S. 621, 642.
Virginia v. West Virginia (1918), 246 U. S. 565.
Webster's New International Dictionary, pages 339 and 490.
Wisconsin v. Pelican Insurance Co., 127 U. S. 265, 287, 289.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. ORIGINAL.

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - - *Complainant,*

vs.

THE STATE OF INDIANA, AND
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL, ALL CITIZENS OF THE
STATE OF INDIANA, - - - - - - *Defendants.*

BRIEF OF COMPLAINANT IN SUPPORT OF THE ORIGINAL JURISDICTION OF THIS HONORABLE COURT OF THIS CAUSE.

May it please the Court:

STATEMENT.

The defendant citizens of Indiana in their return to the rule to show cause why leave to file the bill of complaint in the above entitled cause should not be granted,

and in their brief in support of said return, raised four points on which they insist that this Honorable Court does not have jurisdiction to hear and determine this case.

The points raised by said parties are as follows:

1. They assert, "that the only effective relief sought by the complainant is an injunction to stay a pending proceeding in the Superior Court of Marion County, Indiana, a court of general civil jurisdiction of the State of Indiana, and that neither said action so pending nor said tendered bill of complaint in any way relates to proceedings in bankruptcy." They rely upon Section 265 of the Judicial Code in support of this contention.

2. They assert in clause 5, page 4, of their return that the Marion Superior Court of Marion County, Indiana, "is a court of said State with full and complete jurisdiction to hear and determine said cause and to determine the rights of said parties and the legality of said contract."

3. In clauses 2, 3, 4, and 5, at pages 2, 3 and 4, of said return they insist that the "tendered bill of complaint shows that there is no controversy between the Commonwealth of Kentucky and the State of Indiana," and that "neither said motion for leave nor tendered bill of complaint shows any controversy between the Commonwealth of Kentucky and the State of Indiana, or between the Commonwealth of Kentucky and citizens of the State of Indiana, cognizable by this Honorable Court." They assert in clause 5, at page 4, of said

return that said tendered bill of complaint does not allege any "breach or threatened breach of the contract between said states."

4. In clause number 7, at page 5, of said return they state that: "Neither the motion for leave to file nor the tendered bill of complaint shows that the building of the bridge in the manner stated in said tendered bill of complaint has been authorized by Congress." In support of this contention they rely upon Section 10, Article 1, of the Constitution of the United States. (See their brief, page 11.)

The tendered bill of complaint and tendered amendment thereto affirmatively shows that the agreement entered into by the Commonwealth of Kentucky and the State of Indiana was clearly and specifically authorized by appropriate acts of the General Assemblies of each State and by appropriate Acts of the Congress of the United States. (Specification number 30, paragraph 1, page 37, bill of complaint and specification number 1, pages 1 to 3, of amended bill of complaint, and Exhibits "A" to "F" of the bill of complaint, and Exhibit "H" of the amended bill of complaint.)

Specification number 17, page 31, of the tendered bill of complaint shows that said contract provided "for immediate and continued performance of the covenants therein until said bridge has been completed and is ready for travel."

Specifications numbers 19 and 20, paragraph 1, pages 31 and 32, of said bill of complaint shows the institution of an action in the Marion Superior Court by

the individual defendants in which they seek an injunction against the officers of the State of Indiana to prevent them from performing said contract and thereby seeking to induce and cause a breach of said contract by the State of Indiana.

Specification number 21, paragraph 1, page 32, shows that: "The Commonwealth of Kentucky is not made a party, and cannot be made a party to said cause now pending in said Indiana State Court; but its rights arising out of said contract are vitally involved by the delay which will be caused by said litigation in said Court, * * *." Said specification further shows that: "No adjudication that might be made in said cause in any Court of the State of Indiana would or could be binding on the Commonwealth of Kentucky."

Specification number 22, paragraph 1, page 33, of said bill of complaint shows that *the State of Indiana has ceased performance of said contract and "will not perform the covenants of said contract further until there is a final adjudication of said cause by the Supreme Court of Indiana or of this Honorable Court and if such final adjudication should be adverse, the State of Indiana intends not to perform said contract at all."* Said specifications further shows that: "The period of time required for a final adjudication of said cause in the Courts of Indiana will be not less than one year, and the State of Indiana will during all of said period desist from further performance of the covenants of said contract on its part to be performed." Said speci-

fication shows that: "Said contract contemplates and provides for immediate and continuous performance of its covenants by the State of Indiana and such failure on the part of the State of Indiana to perform the covenants of said contract during said period of litigation will cause a long and unwarranted delay of performance which will in itself constitute a breach of said contract by the State of Indiana."

Specification number 23, paragraph 1, pages 33 and 34, of said bill of complaint shows that such breach and failure to perform will cause great and irreparable damage and injuries to the Commonwealth of Kentucky and to the citizens of Kentucky and that *the Commonwealth of Kentucky has no other adequate remedy than that which it seeks in this Honorable Court.*

Specification number 24, paragraph 1, page 34, of said bill of complaint shows that: *"The aforementioned defendant citizens of Indiana will sustain no damages and they cannot show that either they or any other citizens of Indiana will sustain any damages or injuries by reason of performance by the State of Indiana of the covenants of said contract, on its part to be performed."*

Specification number 26, paragraph 1, page 35, of said bill of complaint shows the public interest and benefit involved in the performance of the covenants of said contract and the construction of said bridge without delay, and further shows that: *"The only Court that can thus determine said controversy as to all interested parties is the Supreme Court of the United*

States in the exercise of its original jurisdiction, and the only interested party that may now complain in said Court is the Commonwealth of Kentucky. The Commonwealth of Kentucky has no remedy in the premises except the one it now seeks in this Honorable Court."

In specification number 31, paragraph 1, pages 37 and 38, of said bill of complaint the complainant shows that: "Said defendants will, unless enjoined, as plaintiffs in said Marion Superior Court proceed to prosecute said action after the 20th day of October, 1928, which date is the return day fixed in said action, and thus cause irreparable loss and damage to the Commonwealth of Kentucky whose rights are involved in said litigation, without representation therein by it, and without jurisdiction in said Court to adjudicate any rights of said Commonwealth. Moreover, to permit said defendants to prosecute said cause as plaintiffs therein during the pendency of this cause would be in violation and in derogation of the jurisdiction of this Honorable Court."

Specification number 33, paragraph 2, pages 39 and 40, shows that: "The State of Indiana, by said written contract, agreed to acquire title to the real estate in Indiana necessary for the construction of said bridge, abutments, and approaches thereto, and to construct said bridge according to certain plans and specifications to be prepared by the consulting engineers which have been employed by the State of Indiana, with the approval of the Commonwealth of Kentucky, and to con-

vey to the Commonwealth of Kentucky a one-half interest in and to said bridge, abutments, approaches and real estate. The Commonwealth of Kentucky has no power to acquire said real estate in Indiana by condemnation."

Taking the allegations of the bill of complaint as a whole it shows that the execution of said contract was fully authorized by appropriate Acts of the General Assemblies of each of the States and by appropriate Acts of Congress, including a specific authorization by an Act of Congress, which Act is copied in full in Exhibit "H" of the amended bill of complaint. Said bill of complaint taken as a whole further shows that the General Assembly of Indiana has provided sufficient money and means, which are now at the disposal of the State of Indiana, to enable it to fully and completely perform the covenants of said contract on its part to be performed, and *it further shows that Indiana has breached said contract by stopping performance of the covenants thereof on its part to be performed, and whatever may be the cause of such breach of contract the State of Indiana has already breached said contract and has refused and now refuses to further perform said contract as contemplated by the parties thereto at the time of the execution of said contract,* and the delay in the performance of said covenants is causing and will continue to cause great and irreparable injury and damages to the Commonwealth of Kentucky and its citizens and the traveling public.

The bridge proposed to be constructed will connect two very important highways running entirely through each of the States of Indiana and Kentucky, which highways form a part of a very important route in the Federal Aid System of highways. The modern tendency of Congress and of the Legislatures of the various States is to encourage the connection of such main highways by bridges constructed and owned by the States or municipalities which will be free of toll charges within a reasonable period of time. A casual examination of the Acts of Congress during the past few years shows that private interests are selfishly seeking permits to construct bridges connecting the principal highways of this country with the privilege of charging and collecting tolls for the use thereof, and when such privately owned bridges are constructed the public money spent in improving such main highways inures to the benefit of such private interests, frequently to the great public detriment.

We desire to call this Honorable Court's attention to the fact that notwithstanding the allegation in the bill of complaint made in specification number 24, which is hereinabove quoted, the defendant citizens of Indiana did not undertake directly or indirectly in their return, to show in this Court what interests they have or represent in trying to defeat the construction of said bridge by the joint act of the two contracting States, nor did they attempt to show that they could in any way be injured or damaged by full and complete performance of said contract by the contracting States.

The contract involved in this action was entered into by the proper officers of the respective sovereign States pursuant to full legislative authority, and was at the time approved as to legality and form by the Attorneys General of each of said States.

We desire to further call the Court's attention to the fact that the defendants, resident citizens of Indiana, did not undertake directly or indirectly in their return to point out any provision of the Indiana Constitution or statutes, of the Kentucky Constitution or statutes, or Acts of Congress on which they rely to invalidate said contract, while in our bill of complaint and amended bill of complaint we set forth the Acts of the General Assemblies of the contracting States and the Acts of Congress authorizing the State of Indiana and the Commonwealth of Kentucky to enter into said contract, and said Acts are copied in full as exhibits in said bill of complaint and amended bill of complaint.

With the modern development of highways contracts between States for the construction of bridges across boundary line streams connecting public highways of sovereign States of the United States are likely to become numerous and we consider it to be of vital importance to the public welfare and progress that jurisdiction for the enforcement and construction of such contracts be clearly and definitely fixed in this Honorable Court, in order that private bridge interests may not, through the medium of suits by citizens of the contracting States, delay the construction of such publicly owned bridges by suits instituted in the State Courts.

ARGUMENT.

I.

The Only Effective Relief Sought by Complainant is not an Injunction to Stay a Pending Proceeding in the Marion Superior Court of Marion County, Indiana.

Counsel for the individual defendants, citizens of Indiana, are in error in insisting "that the only effective relief sought by complainant is an injunction to stay a pending proceeding in the Superior Court of Marion County, Indiana, a court of general civil jurisdiction of the State of Indiana." The complainant shows that in the tendered bill of complaint that said defendants have caused the State of Indiana to breach its agreement with complainant by reason of the proceedings which they have instituted in said Marion Superior Court of Indiana. Indiana had started the performance of the covenants of said contract, on its part to be performed, when said defendants filed an action in said Court to enjoin further performance of said agreement. We insist that said defendants have no right to thus induce or cause the State of Indiana to breach its contract with the Commonwealth of Kentucky, when the States through their proper officers entered into said contract pursuant to Acts of their respective General Assemblies and with express permission of the Congress of the United States. It would be an anomaly if the contract entered into by the proper officers pursuant to such authority could be declared

invalid by the Courts of either State. If such were the rule the Courts of one State might hold the contract to be valid and the Courts of the other State might hold it to be invalid. There was a similar situation presented to this Honorable Court in the case of State of Arkansas v. State of Tennessee, 246 U. S. 158. In that case the Courts of Arkansas and the Courts of Tennessee were in direct conflict in their holdings in reference to the boundary line between said States, the contention of each State being supported by a decision of its Court of last resort. This Court took jurisdiction in that case and determined the proper boundary line between said States. This Court held that the decisions of said State Courts had no effect as judicial determinations of the boundary line as against the other State which was a stranger to the record in both cases.

The prosecution of said suit in the Marion Superior Court of the State of Indiana is now of little importance in this cause for the reason that the decisions of the Courts of Indiana cannot be binding on Kentucky, but the pendency of said action has resulted in the State of Indiana refusing to further perform the covenants of said contract on its part to be performed, and the only tribunal that does or can have jurisdiction of all the parties and which can pass upon the validity of said contract and enforce performance thereof is this Honorable Court.

Counsel for the defendants, citizens of the State of Indiana, insist that Section 265 of the Judicial Code prohibits this Court from enjoining the prosecution of

the suit in said State Court, but we submit that since this Court has exclusive jurisdiction to hear and determine the controversy presented it has power under Section 263 of the Judicial Code to prevent the further prosecution of the action instituted in said State Court and to require said defendants to appear in this Court and assert their claims here. Section 263 of the Judicial Code is in part as follows: "The Supreme Court, * * * shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdiction, and agreeable to the usages and purposes of law."

Under the decisions of this Court which will be hereinafter cited we do not consider this point to be of very vital importance because if this Court takes jurisdiction of this action, holds the contract to be valid and decrees performance, its decision will be binding and conclusive on all parties and Indiana will proceed to carry out its contract.

II.

The Marion Superior Court of Marion County, Indiana, does not have Jurisdiction to Determine the Legality of the Contract.

What we have said in the paragraph next above we think shows that the Marion Superior Court of Marion County, Indiana, does not have "full and complete jurisdiction to hear and determine said cause and to determine the rights of said parties and the legality of

said contract." We consider it fundamental that the courts of one State may not judicially determine the validity or invalidity of a contract between that and another state. The framers of the Constitution of the United States expressly provided in Article 3, Section 2, that this Honorable Court should have exclusive and original jurisdiction in actions or controversies between States. When the defendants, citizens of Indiana, contend that they have the right to contest the validity of said contract in its own courts, they, in effect, concede that citizens of Kentucky would have an equal right to contest its validity in the courts of the Commonwealth of Kentucky and, therefore, there could be no final determination of the validity of the contract except in this Honorable Court if one of the State Courts should hold the contract to be valid and the other should hold it to be invalid. In this Honorable Court the citizens of Indiana have the opportunity to assert their rights in a Court clothed with jurisdiction to settle the entire controversy and if they have any substantial grounds on which to base their contention that the contract is invalid, why should they be unwilling to assert their claim in this, the only Court that can give final or effective relief?

III.

The Tendered Bill of Complaint Presents a "Case" and "Controversy" Between the Commonwealth of Kentucky and the State of Indiana, and Citizens of the State of Indiana, Within the Original Jurisdiction of this Court Under the Provisions of Article 3, Section 2, of the Constitution of the United States and Section 233 of the Judicial Code.

Article 3, Section 2, of the Constitution of the United States provides that: "The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; * * * to controversies between two or more States; between a State and citizens of another State * * *". "In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction."

Section 233 of the Judicial Code provides that: "The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, or between a State and citizens of another State, or agents, in which latter cases it shall have original, but not exclusive jurisdiction."

Therefore, the real question now presented to this Honorable Court is whether or not the tendered bill of complaint and amended bill of complaint state facts

which constitute a "case" or "controversy" between the Commonwealth of Kentucky and the State of Indiana, or between the Commonwealth of Kentucky and the individual defendants, citizens of Indiana. The bill of complaint sets out in full the contract entered into between the Commonwealth of Kentucky and the State of Indiana and shows that the officers of each of said States had full legislative authority to enter into the contract and further shows that the contract was specifically authorized by an Act of Congress as required by Article 1, Section 10 of the Constitution of the United States. By said contract the State of Indiana agreed with the Commonwealth of Kentucky to construct a bridge estimated to cost four million dollars ($4,000,000.00), across the Ohio River at Evansville, Indiana, connecting two important highways known in each State and officially designated as United States Highway Number Forty-one (41). Said contract further provided that Indiana would sell and convey to the Commonwealth of Kentucky a one-half interest in said bridge and approaches.

It therefore appears that the Commonwealth of Kentucky has a property interest involved and that the interest is of such a character that the Commonwealth of Kentucky has no adequate remedy at law and can obtain no adequate remedy except upon application to this Honorable Court to specifically enforce said contract. The State of Indiana has submitted to the jurisdiction of this Court and will specifically perform said contract if specific performance is ultimately decreed

by this Honorable Court. No question of the power of this Court to decree specific performance is or will be presented. The State of Indiana has breached its contract and is now refusing to further perform the covenants of said contract on its part to be performed and will continue to refuse unless and until directed to so perform by this Honorable Court.

Webster's New International Dictionary defines the word *"case"* to mean; "The matters of fact or conditions in a suit, as distinguished from the questions of law; a suit or action in law or equity; a cause. The Supreme Court has defined the phrase *'case* in law or equity,' to mean a 'suit instituted according to the regular course of judicial proceedings,' and designated *cases* from controversies by the limitation of the latter term to civil suits." The same authority defines the word "controversy" as; "A suit in law or equity;—distinguished from *case* as not including criminal actions or proceedings."

Under similar facts as presented in the bill of complaint herein it could certainly not be plausibly argued in an action between private parties that a suit for specific performance was not "instituted according to the regular course of judicial proceedings," as actions for specific performance are among the most common actions on contracts to convey an interest in real property when one party has agreed to convey and then refuses or fails to comply with the agreement. Such is the case presented by complainant herein. Regardless of the reason or motive for Indiana ceasing to perform the covenants of said contract on

its part to be performed it has so ceased and thereby breached said contract. It is not now performing and refuses to perform for an indefinite period of time and gives no assurance that it will ever perform until directed to by a decree of this Honorable Court.

Many cases in which controversies between States have been decided by this Honorable Court "in the exercise of original jurisdiction" are cited by Mr. Chief Justice White in a footnote in Virginia v. West Virginia (1918), 246 U. S. 565, citing fifty-three cases. This Honorable Court has exercised original jurisdiction in numerous cases in controversies between States respecting disputed boundaries and in a number of cases respecting pollution of waters. It has also exercised original jurisdiction in cases involving contracts or compacts between States.

In the case of Kansas v. Colorado, 185 U. S. 125, 140, the Court said:

> "Undoubtedly, as remarked by Mr. Justice Bradley in Hans v. Louisiana, 134 U. S. 1, 15, the Constitution made some things justiciable 'which were not known as such at the common law; such, for example, as controversies between states as to boundary lines, and other questions admitting of judicial solution.' And as the remedies resorted to by independent states for the determination of controversies raised by collision between them were withdrawn from the states by the Constitution, a wide range of matters, susceptible of adjustment, and not purely political in their nature was made justiciable by that instrument."

Again, in the same case at pages 146 and 147, the Court said:

> "Sitting, as it were, as an international, as well as a domestic tribunal, we apply federal law, state law and international law, as the exigencies of the particular case may demand, and we are unwilling, in this case, to proceed on the mere technical admissions made by the demurrer."

Again:

In the case of State of Oklahoma v. Atchison, Topeka and Santa Fe Railway Co., 220 U. S. 277, 288, this Court said:

> "But in order that a controversy between states, justiciable in this court, can be held to exist, something more must be put forward than that the citizens of one state are injured by the maladministration of the laws of another. The states can not make war or enter into treaties though they may, with the consent of Congress, make compacts and agreements. *Where there is no agreement, whose breach might create it, a controversy between states* does not arise unless the action complained of is state action, and acts of state officers in abuse or excess of their powers can not be laid hold of as in themselves committing one state to a distinct collision with a sister state." (Italics ours.)

In the case of Wisconsin v. Pelican Insurance Co., 127 U. S. 265, 287, this Court said:

> "By the Constitution, therefore, this court has original jurisdiction of suits brought by a state

against citizens of another state, as well as controversies between two states."

In the same case, at page 289, the Court said:

> "As to 'controversies between a state and citizens of another state.' The object of vesting in the courts of the United States jurisdiction of suits by one state against the citizens of another was to enable such controversies to be determined by a national tribunal, and thereby to avoid the partiality, or suspicion of partiality, which might exist if the plantiff state were compelled to resort to the courts of the state of which the defendants were citizens."

In the case of Louisiana v. Texas, 176 U. S. 1, 15, this Court said:

> "The language of the second clause of the second section of Article 3, 'in all cases in which a state shall be a party,' means in all the enumerated cases in which a state shall be a party, and this is stated expressly when the clause speaks of the other cases where appellate jurisdiction is to be exercised. This second clause distributes the jurisdiction conferred in the previous one into original and appellate jurisdiction, but does not profess to confer any. The original jurisdiction depends solely on the character of the parties, and is confined to the cases in which are those enumerated parties and those only. California v. Southern Pacific Railroad Co., 157 U. S. 229, 259; United States v. Texas, 143 U. S. 621. And by the Constitution and according to the statutes, the original jurisdiction of this Court is exclusive over suits

between states, though not exclusive over those between a state and citizens of another state."

In the case of State of Pennsylvania v. Wheeling and Belmont Bridge Co., William Otterson and George Croft, 13 Howard, 519, 566, this Court, in commenting upon the compact made by Virginia with Kentucky, which had been expressly sanctioned by the Congress of the United States, said:

> *"This compact, by the sanction of Congress, has become a law of the Union. What further legislation can be desired for judicial action?* In the case of Green, *et al.*, v. Biddle, 8 Wheat. 1, this court held that a law of the State of Kentucky, which was in violation of this compact between Virginia and Kentucky, was void; and they say this Court has authority to declare a state law unconstitutional, upon the ground of its impairing the obligation of a compact between different states of the Union."

In the same case, page 566, this Court further said:

> "No state law can hinder or obstruct the free use of a license granted under an act of Congress. *Nor can any state violate the compact, sanctioned as it has been,* by obstructing the navigation of the river." (Italics ours.)

In the case of Muskrat v. United States, 219 U. S. 346, 356-357, this Court, in discussing its original jurisdiction, quoted with approval from the opinion in the case of *In re* Pacific Railway Commission, 32 Fed. Rep, 241, 255, as follows:

"The judicial article of the Constitution mentions cases and controversies. The term 'controversies,' if distinguishable at all from 'cases,' is so in that it is less comprehensive than the latter, and includes only suits of a civil nature. * * * By cases and controversies are intended the claims of litigants brought before the courts for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress or punishment of wrongs. *Whenever the claim of a party under the Constitution, laws, or treaties of the United States takes such a form that the judicial power is capable of acting upon it, then it has become a case.*" (Italics ours.)

In the case of Foster and Elam v. Neilson, 2 Peters, 253, 309, this Court, in discussing a treaty between two nations, said:

"After these acts of sovereign power over the territory in dispute, asserting the American construction of the treaty by which the government claims it, to maintain the opposite construction in its own courts would certainly be an anomaly in the history and practice of nations. If those departments which are entrusted with the foreign intercourse of the nation, which assert and maintain its interests against foreign powers, have unequivocally asserted its rights of dominion over a country of which it is in possession, and which it claims under a treaty; if the legislature has acted on the construction thus asserted, it is not in its own courts that this construction is to be denied."

Again, the same case, at page 314, this Court said:

> "A treaty is in its nature a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished, especially so far as its operation is *infra*-territorial; but is carried into execution by the sovereign power of the respective parties to the instrument."

In the case of Missouri v. Illinois, etc., 200 U. S. 496, 519, this Court, in commenting upon the case of Pennsylvania v. Wheeling and Belmont Bridge Co., 13 Howard, 519, referred to the compact between Virginia and Kentucky and said:

> "By that compact the use and navigation of the Ohio, so far as the territory of either state lay thereon, was to be free and common to the citizens of the United States. *The compact, by the sanction of Congress, had become a law of the Union.* A state law which violated it was unconstitutional." (Italics ours.)

Again, the same case, at page 519, the Court said:

> "The Constitution extends the judicial power of the United States to controversies between two or more states and between a state and citizens of another state, and gives this court original jurisdiction in cases in which a state shall be a party. Therefore, if one state raises a controversy with another, this court must determine whether there is any principle of law and, if any, what, on which the plaintiff can recover * * * for instance, when a dispute arises about boundaries, this Court must determine the line, and in doing so must be

governed by rules explicitly or implicitly recognized. Rhode Island v. Massachusetts, 12 Pet. 657, 737. It must follow and apply those rules, even if legislation of one or both of the states seems to stand in the way. But the words of the Constitution would be a narrow ground upon which to construct and apply to the relations between states the same system of municipal law in all its details which would be applied between individuals. If we suppose a case which did not fall within the power of Congress to regulate, the result of a declaration of rights by this Court would be the establishment of a rule which would be irrevocable by any power except that of this Court to reverse its own decision, an amendment of the Constitution, or possibly an agreement between the states sanctioned by the legislature of the United States."

In the case of South Dakota v. North Carolina, 192 U. S. 286, 312, the substance of that case was stated by the Court as follows:

> "The title of South Dakota is as perfect as though it had received these bonds directly from North Carolina. We have, therefore, before us the act of a state with an unquestionable title to bonds issued by another state, secured by a mortgage of railroad stock belonging to that state, coming into this Court and invoking its jurisdiction to compel payment of those bonds and a subjection of the mortgaged property to the satisfaction of the debt."

This Court discussed its original jurisdiction in the following language:

"Has this Court jurisdiction of such a controversy, and to what extent may it grant relief? * * * The question of jurisdiction is determined by the status of the present parties, and not by that of prior holders of the thing in controversy. Obviously, too, the subject matter is one of judicial cognizance."

Again, at page 314, in that case, the Court said:

"Coming now to the right of South Dakota to maintain this suit against North Carolina, we remark that it is a controversy between two states; that by section 2, article 3, of the Constitution, this Court is given original jurisdiction of 'controversies between two or more states.' In Missouri v. Illinois and the Sanitary District of Chicago, 180 U. S. 208, Mr. Justice Shiras, speaking for the Court, reviewed at length the history of the incorporation of this provision into the federal Constitution and the decisions rendered by this Court in respect to such jurisdiction, closing with these words (page 240): *'The cases cited show that such jurisdiction has been exercised in cases involving boundaries and jurisdiction over lands and their inhabitants, and in cases directly affecting the property rights and interests of a state.' The present case is one 'directly affecting the property rights and interests of a state.'* " (Italics ours.)

In the same case, at page 316, this Court quoted with approval from the opinion of Chief Justice Marshall in the case of Cohens v. Virginia, 6 Wheat. 264, 378, as follows:

"In the second class, the jurisdiction depends entirely on the character of the parties. In this are comprehended 'controversies between two or more states, between a state and citizens of another state,' and 'between a state and foreign states, citizens or subjects.' If these be the parties, it is entirely unimportant what may be the subject of controversy. Be it what it may, these parties have a constitutional right to come into the courts of the Union."

This Court, in the opinion of said case, at page 316, also quoted with approval from the opinion by Mr. Justice Baldwin in the case of Rhode Island v. Massachusetts, 12 Peters, 657, 720, as follows:

"Those states in their highest sovereign capacity, in the convention of the people thereof * * * adopted the Constitution, by which they respectively made to the United States a grant of judicial power over controversies between two or more states. By the Constitution, it was ordained that this judicial power, in cases where a state was a party, should be exercised by this Court as one of original jurisdiction. The states waived their exemption from judicial power (6 Wheat. 378, 380), as sovereigns by original and inherent right, by their own grant of its exercise over themselves in such cases, but which they would not grant to any inferior tribunal. By this grant, this Court has acquired jurisdiction over the parties in this cause by their own consent and delegated authority; as their agent for executing the judicial power of the United States in the cases specified."

Again, in the same case, at page 318, this Court said:

> *"Without noticing in detail the other cases referred to by Mr. Justice Shiras in Missouri* v. *Illinois, et al., supra, it is enough to say that the clear import of the decisions of this Court from the beginning to the present time is in favor of its jurisdiction over an action brought by one state against another to enforce a property right."* (Italics ours.)

In the case of Missouri v. Illinois and the Sanitary District of Chicago, 180 U. S. 208, 240-241, this Court, after having reviewed previous decisions relating to its jurisdiction in original actions in which a state was a party, said:

> "The cases cited show that such jurisdiction has been exercised in cases involving boundaries and jurisdiction over lands and their inhabitants, and in cases directly affecting the property rights and interests of a state. But such cases manifestly do not cover the entire field in which such controversies may arise, and for which the Constitution has provided a remedy; and it would be objectionable, and, indeed, impossible, for the Court to anticipate by definition what controversies can and what can not be brought within the original jurisdiction of this Court.
>
> *"An inspection of the bill discloses that the nature of the injury complained of is such that an adequate remedy can only be found in this Court at the suit of the State of Missouri."* (Italics ours.)

In the case of United States v. Texas, 143 U. S. 621, 642, this Court said that:

> "The cases in this Court show that the framers of the Constitution did provide, by that instrument, for the judicial determination of all cases in law and equity between two or more states, including those involving questions of boundary."

Again, in the same case, at page 643, this Court said:

> "Such exclusive jurisdiction was given to this Court, because it best comported with the dignity of the state that a case in which it was a party should be determined in the highest, rather than in a subordinate judicial tribunal of the nation."

In the case of Kansas v. Colorado, 206 U. S. 46, 85, this Court said that: "Congress has, by virtue of the grant to it of power to regulate commerce 'among the several states' extensive control over the highways, natural or artificial, upon which such commerce may be carried."

Again, in the same case, at page 97, this Court said:

> "As Congress cannot make compacts between the states, as it cannot, in respect of certain matters, by legislation compel their separate action, disputes between them must be settled either by force or else by appeal to tribunals empowered to determine the right and wrong thereof. Force under our system of government is eliminated. *The clear language of the Constitution vests in this court the power to settle those disputes. We have exercised that power in a variety of instances, de-*

termining in the several instances the justice of the dispute. (Italics ours.) Nor is our jurisdiction ousted, even if, because Kansas and Colorado are states sovereign and independent in local matters, the relations between them depend in any respect upon principles of international law. International law is no alien in this tribunal. In the Paquette Haban, 175 U. S. 677, 700, Mr. Justice Gray declared: 'International Law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination.' "

In the case of Rhode Island v. Massachusetts, 12 Peters, 657, 720, this Court had before it the question of original jurisdiction and said:

> *"Massachusetts has appeared, submitted to the process in her legislative capacity, and plead in bar of the plaintiff's action, certain matters on which the judgment of the court is asked; all doubts as to jurisdiction over the parties are thus at rest, as well by the grant of power by the people, as the submission of the legislature to the process; and calling on the court to exercise its jurisdiction on the case presented by the bill, plea and answer.* (Italics ours.)
>
> "Our next inquiry will be, whether we have jurisdiction of the subject matters of the suit, to hear and determine them.
>
> "That it is a controversy between two states, can not be denied; and though the Constitution does not, in terms, extend the judicial power to all controversies between two or more states, yet it in

terms excludes none, whatever may be their nature or subject."

In the same case, on pages 731 and 732, the Court said:

> "Being thus fully convinced that we have an undoubted jurisdiction of this cause, as far as we have proceeded in examining whether, by a true and just construction of the constitution and laws, it is included or excluded, in the grant of judicial power, for any purpose; we now proceed to inquire how that jurisdiction shall be exerted; whether to retain or dismiss the complainant's bill.
>
> "This depends on our jurisdiction over any of the matters on which the plaintiff asks our interposition. *If there is any one subject on which we can act, the bill must be retained; so that the true inquiry is, not as to the extent, but the existence of any jurisdiction."* (Italics ours.)

In the same case, at page 735, the Court said:

> "In the first aspect of the case, it presents a question of the most common and undoubted jurisdiction of a court of equity; an agreement which the defendant sets up as conclusive to bar all relief, and the plaintiff asks to be declared void, on grounds of the most clear and appropriate cognizance in equity, and not cognizable in a court of law."

Again, in the same case, at page 743, the Court in reference to the compact or agreement in that case, stated:

> "All the states have transferred the decision of their controversies to this court; each had a right to demand of it the exercise of the power which they had made judicial by the confederation of 1781 and 1788; that we should do that which neither states nor congress could do, settle the controversies between them."

In the case of *In Re* Ayers, *et al.*, 123 U. S. 443, 492, this Court said that:

> "When a state submits itself, without reservation, to the jurisdiction of a court in a particular case, that jurisdiction may be used to give full effect to what the state has, by its acts or submission, allowed to be done; and if the law permits coercion of the public officers to enforce any judgment that may be rendered, then such coercion may be employed for that purpose."

The tendered bill of complaint and amended bill of complaint show that the complainant, the Commonwealth of Kentucky, has involved in this action a valuable property right; that it can not be adequately compensated in an action at law; that it seeks in this Honorable Court the enforcement of a contract entered into between the sovereign State of Indiana and the Commonwealth of Kentucky pursuant to authority of the Congress of the United States; that said contract has been breached by the State of Indiana; that no other Court has jurisdiction of all the parties or of the subject matter of the action; and that the Commonwealth of Kentucky has no other means of obtaining the relief

to which it is entitled and the remedy which it now seeks in this Honorable Court.

The State of Indiana has submitted to the jurisdiction of this Honorable Court. It will comply with any judgment or decree which may be entered herein. The complainant, Commonwealth of Kentucky, has a valuable property right at stake and is not seeking in this Honorable Court a mere abstract ruling of law. It seeks the protection and enforcement of that property right.

We respectfully submit that the tendered bill of complaint and amended bill of complaint present to this Honorable Court a justiciable controversy cognizable by this Court in the exercise of its original jurisdiction.

Respectfully submitted,

J. W. CAMMACK,
Attorney General of the Commonwealth of Kentucky,

M. B. HOLIFIELD,
Assistant Attorney General of the Commonwealth of Kentucky,

CLIFFORD E. SMITH,
Assistant Attorney General of the Commonwealth of Kentucky,

Solicitors for Complainant.

FILE COPY

FILED
MAY 13 1929
CHARLES ELMORE CROPL
CLER

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. [redacted], Original. [redacted] 7

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - - Complainant,

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of Indiana, - - - - - - - - - Defendants.

SUPPLEMENTAL BRIEF FOR COMPLAINANT.

J. W. CAMMACK,
Attorney General of Kentucky,

M. B. HOLIFIELD,
Assistant Attorney General of Kentucky,

CLIFFORD E. SMITH,
Assistant Attorney General of Kentucky,

Solicitors for Complainant, the Commonwealth of Kentucky.

WESTERFIELD-BONTE COMPANY, INCORPORATED, LOUISVILLE, KY.

Supreme Court of the United States

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 18, Original.

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - - Complainant,

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROLERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of Indiana, - - - - - - - - Defendants.

INDEX OF POINTS AND AUTHORITIES.

PAGES

STATEMENT 1– 6

1. The Bill of Complaint as amended states a cause of action or controversy between two sovereign States of the United States, and between a sovereign State of the United States and the individual citizens of another sovereign State arising under the constitution and laws of the United States, and this Court has original juris-

PAGES

diction under the provisions of Section 2, Article 3, of the Constitution of the United States. 6– 9

Constitution of the United States, Section 2, of Article 3, and Section 1 of Article 10... 6– 7

2. The contract involved in the case at bar was and is fully authorized and supported by the statutes of Indiana, Kentucky and the United States, and was made pursuant to express consent of Congress 9–34

The statutes relied upon are copied in full in the Bill of Complaint as Exhibits "A" to "G" inclusive, at pages 43 to 100, inclusive, and in the amended Bill of Complaint as Exhibit "H", pages 5 to 7, inclusive.

City of Goshen v. Myers, 119 Ind. 199,..... 14
Hammond, etc., R. Co. v. Zeigler, et al., 198 Ind. 456 15
J. Wooley Coal Co. v. Tevault, 187 Ind. 171, 182 11
Karr v. Board, 170 Ind. 571, 575..... 14
Rockhill v. Benson, 191 Pac. 497..... 11
State, ex rel., v. Bartholomew, 176 Ind. 182, 191 11
Wright, et al., v. House, 188 Ind. 246, 121 N. E. 433..... 13

3. This contract should be specifically enforced on the grounds of the public interest, inadequacy of a legal remedy, multiplicity of suits, and the definiteness of the contract, as all of the technical and supervisory services have been provided for by agreement between the State of Indiana and the Commonwealth of Kentucky by

PAGES

the employment of Modjeski and Masters as consulting engineers 34–49

Board of Commissioners of Mattamuskeet Drainage District, et al., v. A. V. Wills & Sons, et al., 236 Fed. 362, 378-387 44

Gas Securities Company v. Antero & Lost Park Reservoir Company, 259 Fed. 423, 432 42

Joy v. St. Louis, 138 U. S. 1, 47 47

Union Pacific Railroad Company v. Chicago, etc., Railway Company, 163 U. S. 564, 600-604 36

Page on Law of Contracts, Volume 6, Section 3728, page 5780 . . . . . 48, 49

Pomeroy's Equity Jurisprudence (2d Edition), Section 2166 and 2167, pages 4466 to 4871; Section 2183, pages 4898 to 4904; Sections 1401, 1402, 1403, pages 3320 to 3328 and notes 47

25 Ruling Case Law, Sections 23, 28, 32, 39 and 72 . . . . . 47, 48

Williston on Contracts, Volume 3, Section 1418, 1419, 1423 and notes 48

4. Conclusion 49, 50

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 18, Original.

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - - Complainant,

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of Indiana, - - - - - - - - Defendants.

SUPPLEMENTAL BRIEF FOR COMPLAINANT.

STATEMENT.

The contract between the Commonwealth of Kentucky and the State of Indiana which the Commonwealth of Kentucky is seeking to enforce is copied in full in the Bill of Complaint. The State of Indiana, by its duly authorized officers, including her Governor

and the State Highway Commission and Director, opened the negotiations with the Commonwealth of Kentucky, through her Governor and State Highway Commission, which resulted in the contract being executed. The State of Indiana had spent approximately ten million dollars ($10,000,000.00) in constructing a north and south highway through said State, and the Commonwealth of Kentucky had spent a large sum of money in constructing its highways leading to or near the point where both States desired that a bridge be constructed which would adequately serve the needs of the traveling public using said highways, and both States were anxious to have a bridge constructed which would be free of toll charges at the earliest possible date. A well constructed bridge adequate to meet the needs and requirements was estimated by the engineers of the two States to cost approximately four million dollars ($4,000,000.00). The Legislature of Indiana had appropriated, and there was available in the State Treasury of Indiana, sufficient funds to pay one-half of the cost of the construction of such bridge. The Congress of the United States, by an Act approved March 2, 1927, which is copied in full in the amended Bill of Complaint on pages 5, 6 and 7, granted authority to the State of Indiana to construct such bridge and to charge tolls for the use thereof for a period of fifteen years, or until the tolls collected should be sufficient to pay one-half of the cost thereof, and also authorized the State of Indiana to enter into a contract with the Commonwealth of Kentucky by which Kentucky could acquire such interest in such bridge, including its ap-

proaches as a part thereof, as it might elect to acquire, not exceeding a one-half interest therein, "upon such terms as may be agreed upon between said States." The contract which was entered into between the State of Indiana and the Commonwealth of Kentucky was expressly authorized by said Act of Congress, and it was also expressly authorized by Chapter 10 of the Acts of the General Assembly of Indiana of 1927, which Act is copied in full as an exhibit in the Bill of Complaint on pages 43 to 57, inclusive. The contract was also authorized by Chapters 172 and 174 of the Acts of the General Assembly of Kentucky of 1928, which were copied in full as Exhibits "F" and "E" in the Bill of Complaint at pages 87 to 99, inclusive. No claim is made by the defendants, or either of them, that the Commonwealth of Kentucky was not fully authorized to make and enter into said contract. The individual defendants contend that the State of Indiana was not authorized to make and enter into said contract, but they do not make any contention that said Chapter 10 of the Acts of the General Assembly of Indiana of 1927, copied as Exhibit "A" in the Bill of Complaint, is in violation of any provision of the Constitution of the State of Indiana.

The Indiana Bridge Company was granted a permit to construct and operate a toll bridge across the Ohio River at Evansville, Indiana, by the Congress of the United States, by an Act approved March 3, 1927, which is copied in full as Exhibit "H" in the Bill of Complaint at pages 101 to 103, inclusive. Said company was proceeding with its plans to construct a pri-

vately owned and operated toll bridge across the Ohio River at Evansville, Indiana, at the time the State of Indiana and the Commonwealth of Kentucky entered into said contract.

If said Indiana Bridge Company should construct a bridge across the Ohio River at Evansville, Indiana, tolls would be perpetual unless such bridge should be purchased from said company, its successors or assigns, in accordance with the provisions of Section 5 of said Acts of Congress above referred to. If the bridge is constructed across the Ohio River in accordance with the provisions of the contract entered into between the State of Indiana and the Commonwealth of Kentucky, then according to the traffic estimates made by Coverdale and Colpitts, consulting engineers of national reputation, said bridge will be operated free of toll charges after nine years from the date of its completion, and the structure and approaches will be maintained and kept in repair at the joint and equal expense of the two States.

After the execution of said contract between the State of Indiana and the Commonwealth of Kentucky, the State of Indiana, with the approval of the Commonwealth of Kentucky, entered into a written contract employing Ralph Modjeski and Frank Masters, associated consulting engineers of Harrisburg, Pennsylvania and New York City, as consulting engineers to prepare the plans and specifications, including all forms necessary for advertising and letting contracts for the construction of said bridge, and to inspect the materials to be used therein, and to supervise the con-

struction thereof, and to make and certify the monthly and other estimates due the contractors as and when due, and to render such other services as are usually rendered in such cases by consulting engineers.

At the time the individual defendants filed suit in Room Number 2 of the Marion Superior Court of Marion County, Indiana, against the State Highway Commission and other officers of the State of Indiana, the State of Indiana was proceeding in good faith with the performance of said contract, and the Commonwealth of Kentucky was likewise proceeding in good faith with the performance thereof, and has at all times since proceeded in good faith therewith, and was then, has at all times since, and now is ready, able and willing to fully perform each and all of the terms, covenants and conditions of said contract on its part to be performed.

Delay in the construction of said bridge is causing thousands of tourists to take other roads in going north and south, thereby depriving the Commonwealth of Kentucky of the benefits which would accrue from such tourist traffic, and such delay is also seriously and substantially hampering and retarding commercial travel to and from the Commonwealth of Kentucky to its great and irreparable damage.

The Attorney General of Indiana in the answer filed herein by the State of Indiana has admitted that said contract, in his judgment, is valid, but the officers of said State have refused to further perform the terms, covenants and conditions on their part and on the part of the State of Indiana to be performed, until the validity of the contract has been

finally determined by this Court. (Reference is also made to the "Return to Rule to show cause issued in the above entitled cause on October 22, 1928, by the State of Indiana.")

The individual defendants, in their motion to dismiss the Bill of Complaint, set forth on pages 2 and 3 thereof six grounds upon which they rely in said motion. All of said grounds, we think, have been fully answered in the brief filed herein for the Commonwealth of Kentucky in support of the original jurisdiction of this Court of the Bill of Complaint, and we shall not in this brief discuss said points further, except so far as it may be necessary in connection with the particular points to be discussed herein.

ARGUMENT.

THE BILL OF COMPLAINT AS AMENDED STATES A CAUSE OF ACTION OR CONTROVERSY BETWEEN TWO SOVEREIGN STATES OF THE UNITED STATES, AND BETWEEN A SOVEREIGN STATE OF THE UNITED STATES AND THE INDIVIDUAL CITIZENS OF ANOTHER SOVEREIGN STATE, ARISING UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES, AND THIS COURT HAS ORIGINAL JURISDICTION UNDER THE PROVISIONS OF SECTION 2, ARTICLE 3, OF THE CONSTITUTION OF THE UNITED STATES.

Section 2 of Article 3 of the Constitution of the United States provides that:

> "The judicial Power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Author-

ity;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between citizens of different States;—between citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

Section 1 of Article 10 of the Constitution of the United States provides in part that: "No state shall, without the consent of Congress, * * *, enter into any agreement or compact with another state." The Congress of the United States gave its consent to the State of Indiana and the Commonwealth of Kentucky to enter into the contract involved by the enactment of the Bill which is copied in full in the Amended Bill of Complaint as Exhibit "H," on pages 5 to 7, inclusive, and but for said consent said contract could not have been entered into. Therefore, the contract, and the present controversy arose under the Constitution and laws of the United States, and this Court has exclusive and original jurisdiction of the controversy, and the attempted proceeding instituted by the individual defendants in the State Court of Indiana is a mere nullity, and said State Court of Indiana does not have and cannot acquire jurisdiction of the Commonwealth of Kentucky which is a necessary party to any action in which the validity of said contract is involved. The Commonwealth of Kentucky has invoked the original juris-

diction of this Honorable Court to prevent the further breach of said contract and to compel the full performance thereof.

Under the terms of said contract the State of Indiana is obligated to construct the bridge and approaches and to convey to the Commonwealth of Kentucky a one-half interest therein upon certain payments being made by the latter. The Bill of Complaint seeks, in the first paragraph to enjoin the alleged breach, and in the second paragraph to compel specific performance thereof.

The State of Indiana has made no objection to the relief sought in either paragraph, but has alleged that because its co-defendants, citizens of Indiana, now have a suit pending for an injunction in a State Court of Indiana to enjoin the officers of said State from carrying out the provisions of said contract, it will not perform further until its right to proceed has been finally adjudicated as against the attack made by its said co-defendants. The State of Indiana in its answer and response to rule has stated that if specific performance is decreed that it will fully perform all of the terms, covenants and conditions of the contract on its part to be performed, thereby relieving this Court of any difficulty in supervising or seeing that its order for specific performance is complied with.

The citizens of Indiana who are plaintiffs in the suit pending in the State Court of Indiana have been made parties in this action in order that the controversy may be fully and finally adjudicated in a Court having full jurisdiction of all the parties concerned, and

since the breach of said contract has been caused by the suit filed by said individual citizens, the question presented for adjudication concerns the power of the State of Indiana to carry out the provisions of its contract with the plaintiff. The defendant citizens contend that the contract is invalid because of lack of statutory authority for the execution of the contract by the officials of Indiana. The Commonwealth of Kentucky and the State of Indiana as well, through their proper officials, contend that the contract is valid. The complainant further contends that the defendant citizens as such are not injured by the contract, and are not entitled to injunctive relief in the State Court, and that this Honorable Court has power to remove the cause of the breach of said contract under the facts alleged in the Bill of Complaint.

THE CONTRACT INVOLVED IN THE CASE AT BAR WAS AND IS FULLY AUTHORIZED AND SUPPORTED BY THE STATUTES OF INDIANA, KENTUCKY AND THE UNITED STATES, AND WAS MADE PURSUANT TO EXPRESS CONSENT OF CONGRESS.

The Defendant Citizens Confine Their Attack to One Statute of the State of Indiana. The defendant citizens in their attack upon the contract for the construction of the proposed interstate bridge attempt to confine the question to the Act of the General Assembly of Indiana of 1927. Though the officials of Indiana charged with the administration of this Act were, and are now, of the opinion that the Act is sufficient in it-

self to authorize participation in the contract upon the part of Indiana, we think there is impelling argument in favor of the existence of the power of participation by Indiana from other legislation; but, if this is not so, a study of the other legislation will at least aid in the interpretation of the Act of 1927. For these reasons we direct attention to the Federal Highway Acts, to the Act of Congress of March 3, 1927, authorizing the extension of the provisions of the Federal Aid Legislation to interstate bridges, and also to the Act of the General Assembly of Indiana of 1916 and Acts amendatory thereof, authorizing co-operation with the Federal Government in the construction of rural post roads.

The Federal Aid Acts Authorize Co-operation of States in the Construction of Interstate Highways. The purpose of the Federal aid highway legislation is one of *co-operation* with the States in the establishment and construction of a system of trunk highways, interstate in character.

This being so, then the legislation of a State assenting to the provisions of the Federal aid legislation has a like purpose, for it was made compulsory upon the States, in order to receive Federal aid in the construction of roads, to give express assent to the provisions of the Federal legislation upon the subject.

The controlling purpose of Federal aid and the State legislation is one of co-operation in the building of a great national system of trunk or post roads, and it follows that the statutes involved, Federal and

State, should be construed with reference to their intended scope and to the purpose of the legislative bodies in enacting them; and even, if the language used were ambiguous or were susceptible of more than one meaning, it should be taken in such a sense as to conform to the scope of the legislation and to permit the carrying out of the intended purpose.

> State, *ex rel.* v. Bartholomew, 176 Ind. 182, 191; J. Wooley Coal Co. v. Tevault, 187 Ind. 171, 182; Rockhill v. Benson, 191 Pac. 497.

Provisions of Federal Aid Legislation—Scope and Purpose—Assent of States. That the chief purpose of the Federal Highway Act, as amended, is one of cooperation with the States for the establishment of an interstate system of highways is manifest in various provisions of the Federal Highway Acts, and Section 6 of the Amendatory Act of November 9, 1921, makes this intent so clear that the question is not open for construction under the rule above stated as applicable to ambiguous legislation. Section 6 of the Amendatory Act of 1921 (42 Stat. 212) is in part as follows:

> "Sec. 6. That in approving projects to receive Federal aid under the provisions of this Act the Secretary of Agriculture shall give reference to such projects as will expedite the completion of an adequate and connected system of highways, interstate in character.
>
> "Before any projects are approved in any State, such State, through its State highway department, shall select or designate a system of

highways not to exceed 7 per centum of the total highway mileage of such State as shown by the records of the State highway department at the time of the passage of this Act.

"Upon this system all Federal-aid apportionments shall be expended.

"Highways which may receive Federal aid shall be divided into two classes, one of which shall be known as primary or interstate highways, and shall not exceed three-sevenths of the total mileage which may receive Federal aid, and the other which shall connect or correlate therewith and be known as secondary or intercounty highways, and shall consist of the remainder of the mileage which may receive Federal aid."

The Federal Highway Acts of 1916 and 1921 (Sec. 2) both expressly provide that bridges shall constitute parts of the respective highways covered by the legislation.

The State of Indiana Assented to the Federal Aid Acts in Its State Highway Legislation. The State of Indiana, through an Act of its General Assembly of March 8, 1917 (Acts 1917, p. 253), assented to the provisions of the Federal Highway Act of 1916 (39 Stat. 355). The General Assembly of Indiana of 1917 had no doubt of the intent of the Federal Act of 1916, for it expressed the purpose of its Act in the following language:

"An act creating a highway commission, providing for the construction * * * and control of public highways, and providing for co-

operation with the federal government in the construction of rural post roads."

This Act expressly provided for the establishment of "main market" highways, and contained an express provision, similar to that of Section 34 of the present State Highway Act. The Indiana State Highway Commission, under the provisions of the Act of 1917, proceeded to designate for improvement certain "main market" highways, and were met by an injunction suit attacking the validity of the Act upon various grounds. On January 10, 1919, the Supreme Court of Indiana upheld the Act of 1917, which is reported in the case of

Wright, *et al.*, v. House, 188 Ind. 247, 121 N. E. 433.

In the meantime the General Assembly of Indiana had convened in its biennial meeting and passed the present State Highway Act (Acts 1919, p. 119).

Provisions of the Indiana State Highway Act—Power to Connect Interstate Highways. The Act of 1919 contains several provisions evidencing the purpose of co-operation with the Federal Government in the construction of highways, interstate in character.

The title, in part, is as follows:

> "An act creating a state highway commission, providing for the establishment of a system of state highways * * * for the co-operation with the federal government in the construction of rural post roads."

Section 12 of the Act provides, in part, as follows:

> "The state highway commission shall at the earliest possible moment proceed to lay out a system of state highways which shall reach each and every county seat of the state and each and every city or town of over 5,000 inhabitants; and for the connection of county seats, and cities of over 5,000 inhabitants with improved trunk highways of adjoining states and connecting with said trunk highways from other states, whereby said trunk highways of other states and the connecting highways of this state become continuous improved highways."

Section 16 of the Act also provides that "bridges on any State highway shall be considered as part of a State highway." This, however, is only a re-statement of the law, as the Supreme Court had previously held that bridges on a highway constitute a part of the highway.

> City of Goshen v. Myers, 119 Ind. 199;
> Karr v. Board, 170 Ind. 571, 575.

Section 34 of the Act is broad in its expression of the purpose of co-operation, providing in part, as follows:

> "Assent is hereby given to the provisions of the act of congress, approved July 11, 1916, entitled 'An act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes.'
>
> "The state highway commission is hereby authorized to enter into all contracts and agreements with the United States government relating to the construction and maintenance of rural post roads

under the provisions of the said act of Congress, to submit such schemes of program of construction and maintenance as may be required by the secretary of agriculture and do all other things necessary fully to carry out the co-operation contemplated and provided for by the said act. The good faith of the state is hereby pledged to make available funds sufficient to equal the sum apportioned to this state by the United States government during each of the five (5) years for which federal funds are apportioned by the said act and to maintain the roads constructed under the provisions of said act, and to make adequate provisions for carrying out such maintenance. The state highway commission is further authorized to co-operate with the United States government under any federal law in any manner necessary to secure for the State of Indiana the proportion of any federal appropriation which may be made in the future."

Interpretation of the Indiana and Federal Aid Highway Acts by Indiana Supreme Court—Power to Make Interstate Connections. The power of the Indiana State Highway Commission to connect a highway in the State system with a trunk highway at the boundary of an adjoining State was put in question in the case of Hammond, etc., R. Co. v. Zeigler, *et al.*, 198 Ind. 456, and the Supreme Court of Indiana placed a liberal construction on the language of the Act conferring power of co-operation between the States and the Federal Government in the establishment and construction of interstate routes. In the opinion in that case it

appears that the Indiana State Highway Commission undertook to extend the same highway involved in the instant case (then State Road No. 10) through the city of Hammond, by way of Calumet Avenue and Indianapolis Boulevard, in order to connect with 106th Street, Chicago, which had been designated by the Illinois Highway Commission as a State Route. The Indiana Commission, in constructing the improvement through the city, ordered the appellant interurban company to remove their tracks to the center of the street as widened by the Commission. The company sought by injunction to prevent the commission from causing removal of the tracks as ordered and relied upon the language of Section 22 of the Indiana Act (see opinion, p. 467), which in itself would seem to limit the Commission's power, in taking over streets in cities of more than 25,000 population, to "unimproved" streets. The company, relying upon the rule that officers exercising statutory powers can exercise only the power conferred, contended that the Commission was without authority in taking over, widening and improving the street for the reason that the street had been improved by the city of Hammond.

The Supreme Court of Indiana upheld the judgment of the *nisi prius* Court in denying an injunction, quoted from the Federal Aid Acts of 1916 and 1921, and rested its reasoning partly on said acts, but largely on Section 12 of the Indiana State Highway Act of 1916, above cited. The opinion uses the following language:

"It will be observed that the authority conferred by this section to build and maintain State highways connecting with improved trunk highways of adjoining States and reaching county seats and cities of more than 5,000 inhabitants is not restricted by any limitation depending upon whether such highways are in the country or in a city, or are improved or unimproved.

"But the State Highway Commission is given express authority, and is charged with the express duty to lay out, improve and maintain State highways which not only extend to and connect all cities of 5,000 inhabitants, but also connect those highways with improved trunk highways of adjoining States. There can be no doubt that, except so far, if at all, as the power thus conferred is restricted or taken away by some other statutory provision, the language quoted confers power to connect at the State line with the trunk highway of Illinois which leads southeastwardly from the city of Chicago around the southern end of Lake Michigan."

In disposing of the appellant's contention that Section 22 of the Indiana Act limited the power of the Commission in the manner stated, the Court set out Section 22 (p. 467), which refers to the provisions of the Federal Aid Act, and the opinion then states:

"And the new Federal Aid Act thus referred to provides, 'that for the purpose of this Act the term "rural post road" shall be construed to mean any public road over which the United States mails now are or may hereafter be transported, excluding every street and road in a place having

a population, as shown by the last Federal census, of 2,500 or more, except that portion of any street or road along which the houses average more than 200 feet apart.' Sec. 2, 39 Stat. at L. 355, Sec. 2, 42 Stat. at L. 212.

"There is nothing in Section 22, as so amended, which purports to limit or take away any powers or authority conferred upon the State Highway Commission by other provisions of the Act creating it. This section purports expressly to confer additional authority upon the State Highway Commission, to be exercised 'in its discretion,' where the street of a city is 'unimproved,' and a State highway connects with it 'at the corporate limits', regardless of the consent or nonconsent of the city or town officers, who may be compelled to co-operate in such a case. And it expressly declares the legislative intent that this Act shall conform to the Federal Highway Aid statute by which a city street whereon the houses average more than 200 feet apart is defined as a 'rural post road,' whatever the size of the city. Under these provisions, we do not think that anything in Section 22, as amended, operates to restrict the general power conferred by Section 12, so as to prevent the State Highway Commission from having jurisdiction to pave a street in a city which connects at the boundary line of such city with an improved trunk highway of an adjoining State, and on which the houses average more than 200 feet apart, where it has been duly included in the system of State highways adopted.

"We omit any discussion of the question whether the existence of an ancient pavement, consisting of a single-track brick roadway on either side

of an unpaved strip occupied by the tracks of a street railway, in an avenue 100 feet wide, would necessarily, as matter of law, establish that such avenue was not an 'unimproved street' within the meaning of the statute, as against a finding to the contrary by the court below, if such a finding were essential to uphold the judgment appealed from. Neither do we find it necessary to decide whether or not such a street forming part of a State highway of Indiana, and connecting at the corporate limits of the city, where such limits extend to the State line, with an improved trunk highway of the adjoining State with which it makes a continuous trunk line, comes within the provisions of the statute on the subject of paving a street at the joint expense of the State Highway Commission, the city and the owners of abutting property, where a State highway connects at the corporate limits of a city having a population of more than 2,500, with an unimproved street. Though we have an impression that, under the liberal construction which must be given to this statute, it does.

"Section 12, above set out, conferred power upon the State Highway Commission to act under the state of facts therein provided, and Section 22 does not take that power away."

Application of Statutes to Instant Case—Extension of Federal Aid to Bridges. The facts pleaded in the instant case show that the proposed bridge forms a connecting link upon an important interstate, trunk highway extending from Copper Harbor, Michigan, through the States of Indiana and Kentucky to Naples, Florida, the continuity of which is broken to vehicular

traffic at the Ohio River, and that the only means of crossing is a ferry at the proposed bridge site.

In view of the broad provisions of the Federal and State legislation authorizing co-operation between the Federal and State governments and the opinion of the Indiana Supreme Court emphasizing this intended purpose of establishing through interstate routes, there is much reason for the position that Indiana, under agreement with the Commonwealth of Kentucky, could have constructed a free bridge at the site in question without the authority of the Act of the General Assembly of Indiana of 1927, upon which the defendant citizens rely, and, since the Congress, by the Act of March 3, 1927, has extended the provisions of the Federal aid legislation to the construction of bridges upon highways entitled to receive such aid, there would seem to be more reason for the position that the two States involved, in co-operation with the Federal Government, have power to construct the bridge in question, without reference to the Indiana Act of 1927.

The only reason for the statement that they could not have constructed a toll bridge prior to the Act of Congress of March 3, 1927, is that both the Federal Aid Acts of 1916 and 1927 expressly prohibited the collection of tolls upon highways improved by means of Federal aid, and bridges are, as stated, a part of such highways. Hence, under the Federal aid legislation, there was never, and is not now, any authority to collect tolls upon Federal aid highways, except upon bridges constructed as parts of such highways and then only by public bodies specified in the Act of 1927.

The Act of March 3, 1927, extending Federal aid to bridges reads as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled:* That notwithstanding any provision of the Act entitled 'An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes,' approved July 11, 1916, or of the Federal Highway Act, the Secretary of Agriculture may extend, on the same basis and in the same manner as in the construction of any free bridge, Federal aid under such acts, in the construction of any toll bridge and approaches thereto, by any state or states, or political subdivision or subdivisions thereof, upon the condition that such bridge is owned and operated by such state or states, or political subdivision or subdivisions thereof, and that all tolls received from the operation thereof, less the actual cost of operation and maintenance, are applied to the repayment to the state or states, or political subdivision or subdivisions thereof, of its or their part of the cost of construction of such bridge, and upon the further condition that, when the amount contributed by such state or states, or political subdivision or subdivisions thereof, in the construction of such bridge shall have been repaid from the tolls, the collection of tolls for the use of such bridge shall thereafter cease, and the same shall be maintained and operated as a free bridge.

"Approved March 3, 1927."

Statutes of Kentucky Assent to Federal Aid Acts. The Commonwealth of Kentucky, in like manner with the State of Indiana, has enacted a general State Highway Act assenting to the provisions of Federal aid legislation. The Federal legislation has extended the provisions of the Federal aid legislation to bridges upon interstate routes, such as that involved herein. This legislation can apply, by express provision, only to public bodies entitled to receive such aid. For these reasons there would seem to be no escape from the conclusion that these two Sovereign States, in the absence of any additional legislation, had power to construct the bridge as part of an interstate route and pay for it as proposed in the contract now before the Court.

Congressional Consent to Build Specific Bridge and to Execute the Contract. All of the foregoing argument is without reference to the Act of Congress of March 3, 1927, expressly granting Congressional consent to the State of Indiana to construct the specific bridge, at the specific site, in question, or to the Act of the General Assembly of Indiana of 1927, and the additional legislation enacted by the General Assembly of Kentucky, set out in the addenda. These subsequent enactments remove even the shadow of doubt as to the power of the two Sovereigns that might arise under the prior legislation.

The Act of March 3, 1927, granting Congressional consent to construct the particular bridge grants to the State of Indiana, its successors and assigns, the right to construct, maintain and operate a bridge across the

Ohio River at the site as designated in the complaint herein, confers the right to acquire and condemn real estate and other property needed for such purposes and authorizes the collection of tolls thereon as alleged in the complaint.

Section 5 of the Act reads as follows:

> "At any time before or after the completion of such bridge the State of Kentucky may acquire any such interest in such bridge, including its approaches as a part thereof, as it may elect to acquire, but not exceeding a one-half interest therein, upon such terms as may be agreed upon between said States; and upon failure to so agree, may acquire such interest by paying to the State of Indiana such sum as shall equal the actual cost of that proportion of such bridge so acquired by it. And if at any time said State of Kentucky shall acquire a full one-half interest in such bridge, then the right to take tolls for the use of such bridge shall immediately cease; and said right to take tolls shall also cease if and when the net tolls taken, after deducting the cost of collecting such tolls, shall amount to one-half the actual cost of such bridge plus interest thereon at the rate of 5 per centum per annum; and thereafter said bridge shall be free and no toll shall be charged for the use thereof."

Under this Act, the two sovereign States, with authority under the Federal Aid and prior State Acts to connect an interstate route at their common boundary, have express authority to close up this break in the particular highway by the exact method provided for in

the contract involved herein; that is, by construction of the bridge in question by the State of Indiana and by purchase of at least a half interest therein by the Commonwealth of Kentucky.

But neither of the States stopped with this legislative authority. The State of Indiana, through its General Assembly, enacted as additional legislation the Act of 1927, upon which the defendant citizens rest their case. This Act only strengthens the position of the Indiana Highway Commission in entering into the contract, and it certainly does not purport to curtail the power of the State to connect an important State route with a similar route of an adjoining State.

The Indiana Act of 1927 Upon which Defendant Citizens Rely Does Not Modify Power of Indiana, but Adds to the Power to Make Interstate Connections. The Act of the Indiana General Assembly of 1927 (Acts, 1927, p. 23), is broad and comprehensive. After a review of the statutes, Federal and State, hereinbefore cited, one is convinced that the Indiana Legislature was determined to effect interstate connections of its important trunk highways by means of bridges over navigable waters.

The title of the Act is broad and specific. Nothing is left in doubt. It contemplates a method as does the body of the Act, by which Indiana and its subdivisions may construct and pay the entire cost for such a bridge; and then designate the Act as "providing for the necessary approval and consent of any such adjoining States and of the United States; authorizing *the execution of contracts* with the proper authorities of any

adjoining State relative to the construction, maintenance and operation of such bridges and the acceptance of funds therefrom and the disposition of such funds; providing where the title to such bridges shall vest," etc.

Section 1 and 2 of the Act are as follows:

> *"Be it enacted by the General Assembly of the State of Indiana,* That the state highway commission of the State of Indiana be and it is hereby authorized and empowered, in its discretion, to construct a highway bridge over and across any river or other stream forming the boundary line between the State of Indiana and any state adjoining the State of Indiana, notwithstanding the waters of such rivers or stream may not at all times extend to or reach such boundary line, whenever such bridge or any part thereof, including the approaches thereto as a part thereof, will be within the State of Indiana and will directly connect any state or interstate highway now in existence or hereafter constructed within the State of Indiana with any interstate or other public highway now in existence or hereafter constructed in such adjoining state, and although such river or stream may be located either partially or wholly within the territorial limits of such adjoining state; and that, in constructing and maintaining any such bridge, including the approaches thereto as a part thereof, and in providing the necessary personal and real property and easements in real property which may be required for the proper, effective and convenient location, construction and operation of any such bridge, the

said state highway commission be, and it is hereby, authorized and empowered to use and expend so much of the funds provided, or to be provided, by law for its use as may be found by it to be reasonably necessary for such purposes."

Section 3 confers the right *in addition to all other powers* conferred, to contract with an adjoining State. This section is as follows:

> "In addition to any and all other powers conferred upon it by this act, said state highway commission is hereby expressly authorized to negotiate with the proper authorities of any such adjoining state, and to contract for and procure the right to build, maintain and operate such bridge upon that part of any site which may be selected therefor and which shall lie within the boundaries of such adjoining state."

The Act then provides a method by which Indiana, in co-operation with certain counties of the State, may construct such bridges. The Legislature of the State contemplated that a contract might be executed even after steps had been taken to construct a bridge in co-operation with a county. Section 6 authorizes the return of money derived from bonds issued under the Act by a county by the proviso "That is, *for any cause whatsoever, all or any part* of said proceeds derived from the sale of any such bonds shall not be actually used in the construction of such bridge, all of said proceeds not so used shall be repaid to such county," with the depository interest.

Section 10 provides that any such bridge "shall be and is hereby dedicated as an instrument of interstate commerce for the equal use of all citizens of the United States and any other persons who may be entitled to the use thereof." Then follow the provisions for collection of tolls to the extent of the payment of half the cost of any such bridge, the cost of collection and maintenance during such collection, and interest subject to the approval and control of the United States Government, etc., following which is Section 18 in this significant language:

> "Whenever such county, either from moneys derived from net tolls as aforesaid or from moneys paid by an adjoining state, or from both of such sources, shall have been repaid an amount equal to the amount of money contributed by such county to said state highway funds in aid of the construction of such bridge, including principal and interest, and when the state highway fund, either from money derived from net tolls as aforesaid, or from money paid by an adjoining state, or from both sources, shall have been paid an amount equal to the amount contributed by such county in aid of the construction of such bridge, plus interest thereon to the time of such payment, then the right to take tolls on such bridge shall immediately cease and such bridge shall thereupon be dedeclared to be and shall be a free bridge for use in interstate commerce between the State of Indiana and such adjoining state. In no event, however, shall tolls be collected for a longer period of time than is permitted by any law of congress now

in force or hereafter enacted regulating the collection of tolls on interstate bridges."

Section 19 goes even further. This section in itself authorizes the contract involved herein in language that is specific and unambiguous:

> "In the discharge of its duties under the provisions of this act said state highway commission of Indiana, as the agent and representative of the State of Indiana and in the name of the State of Indiana, is hereby authorized and empowered, both before and during the construction of any such bridge and after the completion thereof, to co-operate with and enter into a contract or contracts with such adjoining state, acting through any proper authorities or agents representing such adjoining state, to provide for the payment by such adjoining state of such part of the costs of the construction of such bridge, not exceeding one-half thereof, as may be agreed upon in such contract; and in such contract to also agree upon and determine the time and manner of the making by such adjoining state of such payment or payments and all other details in connection therewith: *Provided,* That any moneys paid to the State of Indiana by any such adjoining state as such adjoining state's agreed part of the cost of construction of any such bridge shall be applied by said State of Indiana to reimburse the State of Indiana and any county of the State of Indiana that shall have issued its bonds under the provisions of this act to aid in the construction of such bridge up to the amount in each case which is equal to the amount provided by said county for such purpose, plus interest

thereon up to the time of repayment thereof, so far as the money so provided was actually used in and about the construction of such bridge; and all moneys so received and applied to reimburse any such county as aforesaid shall be first applied by said county in payment of any of its said bonds issued as aforesaid under the provisions of this act and which are then still outstanding and unpaid, until such bonds and the interest accrued thereon shall be paid in full."

Sections 20 and 21 further provide the method of conveying title, and authorize the execution of contracts for maintenance of such bridges. These sections are as follows:

"Sec. 20. Upon the payment by any such adjoining state of any part of the cost of the construction of such bridge said state highway commission is hereby authorized and directed to issue, in the name of the State of Indiana, to such adjoining state, a proper certificate or instrument of transfer of acknowledgement evidencing the amount contributed by such adjoining state and transferring to it title to a corresponding interest in such bridge, and thereafter the title to such bridge shall be deemed to be vested jointly in the State of Indiana and the adjoining state so contributing to the cost of said bridge, and the interest of each thereof shall be deemed to be in proportion to the respective contributions so made by each one respectively.

"Sec. 20. Said state highway commission is hereby expressly authorized and empowered to negotiate and contract with the proper authori-

ties of such adjoining state in respect to the maintenance of any such bridge."

The General Assembly of Indiana evidently had in mind, in passing the Act, the statutes, Federal and State, hereinbefore cited, and to make sure that there was no attempt to curtail the power of the Indiana State Highway Commission in making interstate connections, it provided in Section 22 that:

> "This act shall at all times be construed as supplemental to and in aid of all other acts providing for the construction of highways and bridges."

The Contract Involved Embodies the Only Workable Plan Under the Laws of the Three Jurisdictions Governing Construction and Ownership of Bridge. When the Legislature of Indiana conferred power upon the Highway Commission of that State to negotiate and to contract, "before, during or after" the construction of such a bridge, with an adjoining State as to the conveyance of an interest in the bridge and as to the maintenance thereof, it necessarily contemplated that a workable plan had to be formulated that would be consistent with the laws of three jurisdictions—the law of the Federal Government and those of the two States; hence the language of the act granting such power *in addition* to all other powers conferred by the act, authorizing an agreement as to the *time and manner* of making payments by the adjoining State and as "to all other details in connection therewith." The contract involved herein embodies the only workable

plan for interstate co-operation. There is no other method by which a "contract" can be made that would be workable and consistent with the statutes of the three jurisdictions. The statutes of Kentucky at this time require payment of its share of the cost to be made by means of tolls. This legislation had to be reckoned with in the contract. To say that the Indiana officials had no power to execute and to carry out this contract is to say that the Legislature of the State did a futile thing in conferring power to "contract" with an adjoining State for the joint ownership and operation of such a bridge. Such a conclusion would be contrary to the first principles in the construction of statutes. It would be contrary to the spirit of co-operation expressed in the statutes of the three jurisdictions in the interest of an interstate system of highways. It would be contrary to the rule that statutes upon the same subject should be given a liberal construction to effectuate the intention of the Legislature, as held by the Indiana Supreme Court in Hammond, etc., R. Co. v. Zeigler, *et al., supra,* and the authorities cited at the beginning of this argument.

The Defendant Citizens are Not Injured by the Contract. In the face of these statutory provisions, Federal and State, how can it be said that the defendant citizens are injured by the execution and carrying out of the contract? The contract was executed in good faith by the officials of each of the contracting States, and has been approved by the legal departments of each as to its legality and form. It has the presumption of validity.

The defendant citizens complain in the State Court of only the acts of the Indiana officials in contracting with the Commonwealth of Kentucky. No attack is made upon the statute. To entitle the citizens to injunctive relief, there must be a showing that they are injured by the action of the Indiana officials in the execution and carrying out of the contract involved herein.

The facts pleaded in the complaint, which include a copy of the complaint of the defendant citizens filed in the State Court, disclose that these citizens are not injured in the least by the execution and carrying out of the contract involved. This is true for the reason that under either plan authorized by the Act of the General Assembly of Indiana—that is, by co-operation with a county or by contract with an adjoining State—the State of Indiana *must pay half* the cost of construction of the proposed bridge out of State funds and the other half out of a fund derived from tolls. The State of Indiana merely takes advantage of the toll features of the Federal aid legislation and the acts of Congress supplemental thereto—enacted for the benefit of both States—and authorizes the tolls collected to be paid to the Commonwealth of Kentucky instead of dividing the fund so derived equally between the State of Indiana and Vanderburgh County under the plan outlined in the Indiana Act of 1927. Indiana pays no more nor no less in tolls or in taxes under the plan of co-operation with the Commonwealth of Kentucky.

The State of Indiana, however, does gain in this: there is released for its immediate use a sum equal to a fourth of the cost of the bridge that otherwise would be tied up to await the collection of tolls. This amount under the interstate plan is therefore available for immediate use upon its highways, which can be matched by a like amount of Federal aid. Besides, this plan gains the friendly co-operation of a great sovereign State in the construction of an interstate project, with the possibility, as contemplated in the statutes of Kentucky, of retirement of the bonds issued by the State, before the entire amount of tolls authorized shall have been collected, in which event the bridge would then become a free bridge. This result would be in harmony with the spirit of the provisions of the Federal Aid Acts which, with the one exception mentioned, contemplate the free use of highways; and the Act making the exception in favor of the States' evidences an intent to establish the free use of bridges at the earliest possible moment. In other words, the State of Indiana, and its citizens as well, had all to gain and nothing to lose by adoption of the interstate plan as provided for in the contract.

Indiana Does Not Object to Relief Sought by Kentucky. If this Honorable Court grants to the Commonwealth of Kentucky the relief prayed in the complaint, the State of Indiana then stands ready to proceed with its contract. If a sovereign State, with the wealth and resources of Indiana, is unable to carry out such a contract, it is not likely that any institution, public or private, could do so. The State has funds

and forces available. It has signified its willingness to go forward upon removal of the obstacle presented by the defendant citizens, who question the expenditure of the necessary amount estimated at approximately $4,000,000.

To grant the relief prayed by the Commonwealth of Kentucky at this time, to which action the State of Indiana does not object, not only means that construction may go forward, but it would avoid a question more difficult than that presented in the event of a total failure to carry out the contract and relief were then sought, therefor by the plaintiff in this Honorable Court. The relief sought by the complaint is the only adequate and effectual remedy for the protection of the rights of the Commonwealth of Kentucky.

THE CONTRACT SHOULD BE SPECIFICALLY ENFORCED ON THE GROUNDS OF THE PUBLIC INTEREST, INADEQUACY OF A LEGAL REMEDY, MULTIPLICITY OF SUITS, AND THE DEFINITENESS OF THE CONTRACT, AS ALL OF THE TECHNICAL AND SUPERVISORY SERVICES HAVE BEEN PROVIDED FOR BY AGREEMENT BETWEEN THE STATE OF INDIANA AND THE COMMONWEALTH OF KENTUCKY BY THE EMPLOYMENT OF MODJESKI AND MASTERS AS CONSULTING ENGINEERS.

We realize that the general rule is that contracts for building and construction will not be specifically enforced on account of the inconvenience of enforcing a decree and the difficulty of supervising the performance of the contract, but this general rule is subject

to a number of exceptions and we think the facts in the case at bar bring it clearly within an exception to the general rule. The chief reason for the general rule has been obviated in this case by the employment of Modjeski and Masters by the State of Indiana with the approval of the Commonwealth of Kentucky, as provided in the contract involved in the case at bar. The contract of employment of said engineers requires them to prepare the plans, specifications and all of the technical data and to supervise the construction of the bridge. No other supervision is necessary than that which they are to provide. Both States have agreed that said engineers shall prepare the plans and other technical data and supervise the construction of said bridge and to approve and certify the monthly and other estimates of the contractor or contractors. They are also to prepare all necessary forms for advertising and letting the contracts of construction and are to inspect and approve all of the materials to be used in the construction of said bridge.

If specific performance is not decreed, the Commonwealth of Kentucky is helpless to proceed with the construction of said bridge because it does not have a congressional permit to construct a bridge at said location, and it does not have the power to acquire the necessary land in Indiana for the abutments and approaches on the north side of the Ohio River, and it cannot be adequately compensated in damages for breach of the contract. The Court will take judicial notice that the tourist trade in recent years brings

vast sums of money to the various States and the citizens thereof, and the Commonwealth of Kentucky will lose a large volume of tourist travel and trade by reason of delay in the completion of said bridge.

This Court in the case of Union Pacific Railway Company v. Chicago, etc., Railway Company, 163 U. S. 564, 600-604, upheld a decree of specific performance made by the United States Circuit Court for the District of Nebraska, which decree had been previously affirmed by the United States Circuit Court of Appeals for the Eighth Circuit. The provisions of said contract were much more complicated and difficult of supervision than those in the contract involved in the case at bar. Mr. Chief Justice Fuller delivered the opinion of this Court in that case, and that part which relates to the specific performance is as follows:

> "The jurisdiction of courts of equity to decree the specific performance of agreements is of a very ancient date, and rests on the ground of the inadequacy and incompleteness of the remedy at law. *Its exercise prevents the intolerable travesty of justice* involved in permitting parties to refuse performance of their contracts at pleasure by electing to pay damages for the breach.
>
> *"It is not contended that multiplicity of suits to recover damages for the refusal of defendants to perform would afford adequate relief, nor could it be, for such a remedy under the circumstances would nei her be plain nor complete, nor a sufficient substitute for the remedy in equity, nor would the interests of the public be subserved thereby. But it is objected that equity will not decree*

specific performance of a contract requiring continuous acts involving skill, judgment and technical knowledge, nor enforce agreements to arbitrate, and that this case occupies that attitude. We do not think so. The decree is complete in itself, is self-operating and self-executing, and the provision for referees in certain contingencies is a mere matter of detail and not of the essence of the contract.

"It must not be forgotten that in the increasing complexities of modern business relations equitable remedies have necessarily and steadily been expanded, and no inflexible rule has been permitted to circumscribe them. As has been well said, equity has contrived its remedies 'so that they shall correspond both to the primary right of the injured party, and to the wrong by which that right has been violated'; and 'has always preserved the elements of flexibility and expansiveness, so that new ones may be invented, or old ones modified, in order to meet the requirements of every case, and to satisfy the needs of a progressive social condition in which new primary rights and duties are constantly arising and new kinds of wrongs are constantly committed.'

"We regard the case of Joy v. St. Louis, 138 U. S. 1, as determining that this contract was one within the control of a court of equity to specifically enforce. In that case the St. Louis, Kansas City and Colorado Railroad Company acquired by succession, under a contract, the right of running its trains over the line of the Wabash Company from a point on the northern line of Forest Park, through the park and into the Union Depot at St.

Louis, together with the right to use side tracks, switches, turnouts and other terminal facilities. It was a continuing right and unlimited in time, and the contract contained provisions regulating the running of trains and prescribing the duties of superintendents, trainmasters and other officers. *The objections that are urged against the specific performance of the contract under consideration were urged against the specific performance of that contract and were severally overruled, and it was held that nothing short of the interposition of a court of equity would provide for the exigencies of the situation.* (Italics ours.)

"This case was cited with approval in Franklin Telegraph Co. v. Harrison, 145 U. S. 459. The contract there was one for the use by Harrison Brothers & Co. of a wire of the Franklin Telegraph Company between Philadelphia and New York. It appeared that Harrison Brothers & Co. had been in the possession of a certain valuable contract with the Insulated Lines Telegraph Company, to the rights of which company the Franklin Telegraph Company had succeeded. Desiring to have that contract terminated, the Franklin Company entered into a new contract with Harrison Brothers, by which the Franklin Company agreed to allow Harrison Brothers the right to put up, maintain and use a telegraph wire on the poles of the Franklin Company. At the expiration of ten years thereafter the wires were to become the property of the telegraph company, after which time the telegraph company was to lease the same to Harrison Brothers for $600 per annum, payable quarterly, and with all the other terms and conditions as they existed before. The ten years hav-

ing expired, Harrison Brothers continued to use the wire, paying the stipulated sum of $600 per annum therefor, but after this had gone on for about three years the telegraph company served notice on Harrison Brothers putting an end to the agreement, whereupon Harrison Brothers filed a bill to restrain the telegraph company from terminating the contract and to have the same specifically enforced, and this court held that the contract was one proper for specific performance.

"The same rule was laid down in Prospect Park & Coney Island Railroad v. Coney Island & Brooklyn Co., 144 N. Y. 152, where many authorities are cited.

"In Railroad Co. v. Alling, 99 U. S. 463, this court directed an injunction against the Canon City Railway Company from preventing the Denver road from using the right of way through the Grand Canon, and said: 'If, in any portion of the Grand Canon, it is impracticable or impossible to lay down more than one roadbed and track, the court, while recognizing the prior right of the Denver Company to construct and operate that track for its own business, should, by proper orders, and upon such terms as may be just and equitable establish and secure the right of the Canon City Company, conferred by the act of March 3, 1875, to use the same roadbed and track, after completion, in common with the Denver Company.'

In The Express cases, 171 U. S. 1, the express companies sought to restrain the railway companies from refusing to carry express matter on the terms of contracts which had expired, which the court held could not be done, and it was said: 'The legislature may impose a duty, and when im-

posed it will, if necessary, be enforced by the courts; but, unless a duty has been created either by usage or by contract, or by statute, courts cannot be called on to give it effect.'

"It was objected in Joy's case that the court was proposing to assume the management of the railroad 'to the end of time,' but Mr. Justice Blatchford, speaking for the court, responded that the decree was complete in itself, and that it was 'not unusual for a court of equity to take supplemental proceedings to carry out its decree and make it effective under altered circumstances.' *And the court applied the principle that considerations of the interests of the public must be given due weight by a court of equity, when a public means of transportation, such as a railroad, comes under its jurisdiction. 'Railroads are common carriers and owe duties to the public,' said Mr. Justice Blatchford. 'The rights of the public in respect to these great highways of communication should be fostered by the courts; and it is one of the most useful functions of a court of equity that its methods of procedure are capable of being made such as to accommodate themselves to the development of the interests of the public, in the progress of trade and traffic, by new methods of intercourse and transportation. The present case is a striking illustration.* Here is a great public park, one of the lungs of an important city, which, in order to maintain its usefulness as a park, must be as free as possible from being serrated by railroads; and yet the interests of the public demand that it shall be crossed by a railroad. But the evil consequences of such crossing are to be reduced to a minimum by having a single right of way, and a single set of

tracks, to be used by all the railroads which desire to cross the park. These two antagonisms must be reconciled, and that can be done only by the interposition of a court of equity, which thus will be exercising one of its most beneficent functions.'

"*Clearly the public interests involved in the contracts before us demand that they should be upheld and enforced.*

"Doubtless a court of equity may refuse to decree the specific performance of a contract, if it be unconscionable; or bad faith in the parties seeking its enforcement be shown; or duress or fraud appear; or if it be unjust or inequitable; or if the decree would produce results so inequitable as to be incompatible with the proper exercise of the jurisdiction. *But here it appears that the contracts were solicited by the Pacific Company; were fairly made on terms substantially proposed by itself;* and that their violation by that company was unjustifiable. The contracts were approved promptly and with unanimity; the consideration appears to have been fair and reasonable; the St. Paul and Rock Island companies abandoned their previous enterprise in reliance on them; they entered upon the performance of the contracts, and large sums of money were expended in carrying them out. The conduct of the Pacific Company was not such as to commend itself to a court of equity, and we can do no better than to quote from the opinion of Mr. Justice Brewer, in deciding the case on circuit: 'It is to the higher interest of all, corporations and public alike, that it be understood that there is a binding force in all contract obligations; that no change of interest or change of management can disturb their sanctity or break

their force; but that the law which gives to corporations their rights, their capacities for large accumulations, and all their faculties, is potent to hold them to all their obligations, and so make right and justice the measure of all corporate as well as individual action.' " (Italics ours.)

In the case of Gas Securities Company v. Antero & Lost Park Reservoir Company, 259 Fed. 423, 432, the United States Circuit Court of Appeals, Eighth Circuit, held that a contract with an irrigation district to construct and deliver to it a complete irrigation system for three million dollars ($3,000,000) of the bonds of the district, which also provided for increased storage capacity to seventy-one thousand acre feet, for the construction of a system of two distributing reservoirs within certain survey sections, with a capacity of nine thousand and four thousand acre feet, respectively, and providing the method, time and conditions of payment, and numerous other provisions, could be specifically enforced by a court of equity. The contract involved in that case was much more difficult of supervision and of enforcement than the contract involved in the case at bar. There was also in that case intermeddling on the part of third parties to prevent the performance of the contract. The United States Circiut Court of Appeals for the Eighth Circuit in an opinion delivered by Circuit Judge Stone in discussing the contention made in that case similar to the one made by the individual defendants in the case at bar, said:

"But it is objected here that such protection would entail the supervision of construction work

and that such burden courts cannot and will not assume. *The bill presents no such problem.* Lucas had already finished ninety per cent. of the work satisfactorily when prevented for reasons in no way relating to the manner in which he was performing his contract. *He is ready and willing to continue to completion in accordance with the contract.* No relief is due, under the bill, unless the contract is properly performed. The appellees may protect themselves in that regard under the terms of their various contracts with Lucas. The only mandatory relief asked, even after full satisfactory performance by Lucas, is the delivery of deeds and bonds already placed in escrow for the very purposes asked in the bill.

"While the contract here was one of purchase of a completed irrigation system, appellees have treated it in respect to specific performance as though it were a construction contract. Even so regarded, *it may be noted that specific performance of a construction contract may be decreed.* Wheeling Traction Co. v. Board of Commissioners of Belmont County, 248 Fed. 205, 160 C. C. A. 283; Board of Commissioners of Mattamuskeet Drainage District v. Wills & Sons (D. C.), 236 Fed. 362, 380." (Italics ours.)

The United States District Court for the Eastern District of North Carolina decreed specific performance of an involved and complicated contract for the construction of a drainage system in accordance with the plans and specifications annexed for the drainage of a large lake near the coast and surrounding lands. Board of Commissioners of Mattamuskeet Drainage

District, *et al.*, v. A. V. Wills & Sons, *et al.*, 236 Fed. 362, 378-387. The District Judge in the opinion in said case discussed the general rule relating to specific performance of building contracts and the exceptions to said general rule, and cited and quoted from the case of Union Pacific Railway Company v. Chicago, etc., Railway Company, 163 U. S. 564, 600, which is hereinabove cited and quoted in part. The Court also quotes with approval from Pomeroy's Equity Jurisprudence, Sections 1402 and 1403, as follows:

> "The jurisdiction does not depend upon the nature of the contract, nor of the subject-matter, but it will be exercised whenever the legal remedy is inadequate. * * * The ground of jurisdiction includes two classes: * * * (2) When, from some peculiar feature of the contract, either in its subject-matter or in its terms, or in the relation of the parties, it is impossible to arrive at a legal measure of damages at all, or at least with any sufficient degree of certainty."

The Court in the opinion in that case said:

> "Long drawn out, expensive suits at law, in which numerous and uncertain elements of damages would be involved, with uncertain results, both in respect to amount and ultimate recovery, strongly appeal to the court for equitable relief, if it can be granted without injury to either party.
>
> " 'Specific performance is a conscious attempt on the part of the court to do complete justice to both the parties, with respect to all the judicial relations growing out of contract between them.' Pom. Eq., Section 1401, note.

"Hence, the learned author says that damages are inadequate 'when the subject-matter of the contract is of such a special nature, or of such a peculiar value, that the damages, when ascertained, according to legal rules, would not be a just and reasonable substitute for, or representative of, that subject-mater in the hands of the party who is entitled to its benefit.' Section 1401.

"It would seem quite clear that, in view of the character of the work to be done, the effect of the failure to do it, and the status of the parties, the case comes within the class in which courts of equity grant relief because of the inadequacy of the remedy afforded in a court of law."

Again, in the same case, the Court said:

"It is manifest, from the counterclaim, that defendants are willing and desirous of completing the contract, if they can be assured of the validity of the notes and the priority of their lien. At the time the suit was instituted, defendants were not advised in respect to the attitude of the Federal Trust Company in regard to the subordination of its lien to that of defendants. It is manifest that the court cannot grant the relief prayed for by defendants and leave the complainants without remedy for the failure by defendants to complete the work. Both parties wish the completion of the work. *Neither of them assert that there is any obstruction to this end other than the question of the validity and security of the notes.* To dismiss the bill and thereby the counterclaim of defendants, notwithstanding the opinion entertained by

the notes, and the right of defendants to specific performance of the supplemental contract, would be trifling with the valuable rights of all parties. *Both parties concede that they understand and do not differ in regard to the character of the work, the manner of its performance, or the condition upon which the price is to be paid. The court will not assume that they will not, in good faith, perform the requirements of a decree when their rights are declared and secured.* Notwithstanding their insistence that the contracts are *ultra vires,* that the deed of trust to Dunham and Laird, trustees, is not valid, because of the alleged defective probate and registration, and that the notes are invalid, they ask the court, in their counterclaim, to adjudge that the contracts are valid, and that the deed is duly executed and probated, and that the notes delivered to them are valid and secured by a first lien upon the property conveyed to the trustee, in all of which, the court, for the reasons set forth, concurs with defendants. The court also concurs with them in respect to their right to have specific performance of the supplemental contract. The court, for the reasons set forth, is of the opinion that defendants should enter upon and diligently continue to completion the work which they obligated to perform. Of course, defendants are entitled to a reasonable time within which to complete the work. This will be provided for in the decree. There are several other matters, referred to in the answer, collateral to the principal matter in controversy, which may, if necessary, be taken care of in the decree." (Italics ours.)

In the case of Joy v. St. Louis, 138 U. S. 1, 47, this Court in an opinion written by Mr. Justice Blatchford, reviewed the decisions of this Court relative to specific enforcement of contracts similar in effect to the one in the case at bar, and in addition to the statements hereinabove quoted in the case of Union Pacific Railway Company v. Chicago, etc., Railway Company, 163 U. S. 564, 600, said:

> "Considerations of the interests of the public are held to be controlling upon a court of equity, when a public means of transportation, such as a railroad, comes into the possession and under the dominion of the court. These considerations have been recognized and applied by this court in several cases. Barton v. Barbour, 104 U. S. 126; Miltenberger v. Logansport Railway, 106 U. S. 286, 311, 312; Union Trust Co. v. Illinois Midland Railway, 117 U. S. 434, 458."

The contract involved in the case at bar is not only a contract for the construction of the bridge, but it is a contract for the sale and purchase of real estate,—an undivided interest in said bridge and approaches. We believe that specific performance should be decreed, and that our views are supported by the decisions and authorities above quoted and cited, and also by leading text writers. Pomeroy's Equity Jurisprudence (2nd Edition), Sections 2166 and 2167, pages 4466 to 4871, inclusive, and notes. See also Section 2183, pages 4898 to 4904, inclusive, and notes; and also Sections 1401, 1402, 1403, pages 3320 to 3328, and notes; 25 Ruling

Case Law, Sections 23, 28, 32, 39 and 72; Williston on Contracts, Volume 3, Sections 1418, 1419, 1423, and notes. In the latter part of Section 1423, the text states:

> "And in recent years a recognition by the courts of the interests of the public in the performance by public service companies of some of their obligations, has established the principle that where public interests require, equity will decree specific performance of contracts, though they involve a long continued series of acts. Even though no public interest is involved, if the legal remedy under the particular circumstances of the case is clearly inadequate, in recent years some courts at least are disposed to grant relief if possible, though the contract calls for long continued performance, as an installment contract, or a covenant in a lease to heat and light demised premises."

A long list of cases is cited supporting the rule stated in said quotation including three cases decided by this Court.

In Page on the Law of Contracts, Volume 6, Section 3728, page 5780, is the following statement:

> "While in some exceptional cases the remedy at law is made more plastic and plenary than can be given in equity, the great advantage of specific performance, in mose cases, is that it can be better adapted to the needs of the party in the particular case than can a judgment at law, giving to the

plaintiff, on the one hand, the benefit of the very performance for which he has contracted, and, on the other hand, safeguarding the interest of the defendant so that no intolerable burden can be cast upon him as a consequence of his default. Specific performance is not restricted to the cases for which precedents exist, but is given wherever the broad principles which control the subject make such relief proper."

See also, in the same volume, Sections 3325 and notes.

CONCLUSION.

The contract involved in the case at bar was and is supported by legislative authority of both States and by express consent of the Congress of the United States. It was approved as to legality and form by the Attorneys General of each of said States, and is clothed with the presumption of validity. This presumption has not been overcome by the attack of the defendant citizens. There has been no showing of injury on their part, and the defendant, State of Indiana, has signified its willingness to carry out the contract if specific performance is decreed. The facts stated in the Bill of Complaint as amended clearly show that the complainant has no adequate remedy at law, and that if specific performance is decreed, there will be no difficulty in the enforcement thereof, and the relief

prayed by the Commonwealth of Kentucky should in all things be granted.

Respectfully submitted,

J. W. CAMMACK,
Attorney General of Kentucky,

M. B. HOLIFIELD,
Assistant Attorney General of Kentucky,

CLIFFORD E. SMITH,
Assistant Attorney General of Kentucky,

Solicitors for Complainant, the Commonwealth of Kentucky.

FILE COPY

OCT 28 19

CHARLES ELMORE C

CL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

NO. [redacted]IGINAL [redacted] 81 [redacted]

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - - - Complainant,

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of
Indiana, - - - - - - - - - - - Defendants.

SECOND SUPPLEMENTAL BRIEF OF COMPLAINANT.

By JAMES W. CAMMACK,
Attorney General of Kentucky,

M. B. HOLIFIELD,
Ass't Attorney General of Kentucky,

CLIFFORD E. SMITH,
Ass't Attorney General of Kentucky,

Solicitors for Complainant.

Roberts Printing Co., Frankfort, Ky.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

NO. 16, ORIGINAL.

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - *Complainant*

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL, All Citizens of the State of Indiana, - - - - - - *Defendants.*

INDEX OF POINTS AND AUTHORITIES.

PAGES

STATEMENT 1

1. The provision of Section 265 of the Judicial Code forbidding injunctions to stay proceedings in state courts must be construed in connection with Section 262 of the Judicial Code, and if a Federal Court has obtained jurisdiction of the case, it can take such action as may be necessary to maintain its authority and enforce its decree. In the case at bar the Supreme Court of the United States has original and exclusive jurisdiction, and the Marion

Superior Court of Marion County, Indiana, has neither jurisdiction of the parties to the contract involved in the case at bar nor of the subject matter 2-7

Constitution of the United States, Article 3, Section 2 2
Ex Parte Simon, 208 U. S. 145..... 5
Gunter, Attorney General of the State of South Carolina v. Atlantic Coast Line Company, 200 U. S. 273, 291 5
Hunt v. New York Cotton Exchange, 205 U. S. 322 5
Judicial Code, Section 262 3
Judicial Code, Section 265 3
Pierce v. National Bank of Commerce of St. Louis, 282 Fed. 100 6
Sand Springs Home, et al. v. Title Guarantee & Trust Co., 16 Fed. (2d) 917, 918..... 5
Simon v. Southern Railway Company, 236 U. S. 115 5
Sovereign Camp Woodmen of the World v. O'Neill, et al., 266 U. S. 293, 298 4
St. Louis Min. & Mill Co. v. Montana Mining Company, 148 Fed. 450 6
United States v. Babcock, et al., 6 Fed. (2d) 160 6

2. Chapter 53 of the Acts of the General Assembly of Indiana of 1919 and Chapter 10 of the Acts of the General Assembly of Indiana of 1927, considered in connection with the Acts of Congress copied in full in the bill of complaint and amended bill of complaint as exhibits "G" and "H" respectively, clearly authorized the State of Indiana to execute said contract. There is no provision in the Constitution of Indiana limiting the operation or effect of said legislative enactments. There

is no provision in the Constitution of Indiana prohibiting the Indiana State Highway Commission or other officers of Indiana from expending public funds of said State beyond the boundary limits of said State.

Booth v. City of Minneapolis, 203 N. W. 625.. 14
Bronx Park Commission v. Hylan, 198 N. Y. 271 14
Chapter 10, Acts of the General Assembly of Indiana of 1927, Section 1 8
Chapter 10, Acts of the General Assembly of Indiana of 1927, Section 22 9
City of Tacoma v. Titlow, 101 Pac. 827..... 14
Dysart v. City of St. Louis, 11 S. W. (2d) 1048 13
Freeman v. Trimble, 129 N. W. 88..... 13
Hauessler v. City of St. Louis, 103 S. W. 1034 11
Klein v. City of Louisville, 6 S. W. (2d) 1109 13
Langlon v. City of Walla Walla, 193 Pac. 1.. 14
Latinette v. City of St. Louis, 201 Fed. 676... 12
Luxton v. North River Bridge Co., 153 U. S. 525 11
McMurray v. Kansas City, 223 S. W. 621..... 12
Ray v. Kansas City, 224 S. W. 136..... 13
St. Paul v. Lamprecht Bros., 88 Fed. 453.... 13
Superior Water, Light & Power Co. v. Superior, 183 N. W. 254..... 14
The People ex rel., Henry C. Murphy, Pres., etc. v. Kelly, 76 N. Y. 475, 487..... 9
Walker v. City of Cincinnati, 21 Ohio State 14 13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

NO. 16, ORIGINAL.

IN EQUITY.

COMMONWEALTH OF KENTUCKY, . . *Complainant,*

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL, All Citizens of the State of Indiana, - - - - - *Defendants.*

SECOND SUPPLEMENTAL BRIEF OF COMPLAINANT

STATEMENT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The facts are fully stated in the Bill of Complaint as amended and in the two previous briefs of complainant herein. However, there are two points of defense urged by the individual defendants in their motion to dismiss complainant's bill as amended and in the answer which they have filed herein, concerning which we now desire to discuss and to present to the Court some authorities which we think will show that said points are without merit.

I

THE PROVISION OF SECTION 265 OF THE JUDICIAL CODE FORBIDDING INJUNCTIONS TO STAY PROCEEDINGS IN STATE COURTS MUST BE CONSTRUED IN CONNECTION WITH SECTION 262 OF THE JUDICIAL CODE, AND IF A FEDERAL COURT HAS OBTAINED JURISDICTION OF THE CASE, IT CAN TAKE SUCH ACTION AS MAY BE NECESSARY TO MAINTAIN ITS AUTHORITY AND ENFORCE ITS DECREE. IN THE CASE AT BAR THE SUPREME COURT OF THE UNITED STATES HAS ORIGINAL AND EXCLUSIVE JURISDICTION, AND THE MARION SUPERIOR COURT OF MARION COUNTY, INDIANA, HAS NEITHER JURISDICTION OF THE PARTIES TO THE CONTRACT INVOLVED IN THE CASE AT BAR NOR OF THE SUBJECT MATTER.

Article 3, Section 2, of the Constitution of the United States provides that:

> "*The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made,* under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; *to controversies between two or more States; between a State and citizen of another State;* between citizens of different States; between citizens of the same State claiming lands under grants

of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

"In all cases affecting ambassadors, other public ministers and consuls, and those *in which a State shall be a party, the Supreme Court shall have original jurisdiction.* In all other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

"The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed."

Section 262 of the Judicial Code provides that:

"The Supreme Court and the district courts shall have power to issue writs of scire facias. The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law."

Section 265 of the Judicial Code provides that:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

The contract involved in the case at bar was and is fully authorized by legislation duly enacted by the

General Assembly of Indiana and by legislation duly enacted by the General Assembly of Kentucky and the consent of the Congress of the United States was given to the execution thereof, as required by Article 1, Section 10, of the Constitution of the United States.

The rule seems to be well established that where a Federal Court has first obtained jurisdiction of a matter in controversy by the institution of a suit therein, it may restrain proceedings in any other court involving the same subject matter.

Under the provisions of Article 3, Section 2, of the Constitution of the United States, the Supreme Court of the United States has original and exclusive jurisdiction to determine the validity of the contract involved in the case at bar, and the Marion Superior Court of Marion County, Indiana, does not have jurisdiction of the parties to said contract and does not have jurisdiction to determine the validity thereof. Therefore, the Marion Superior Court of Marion County, Indiana, having no jurisdiction and this Honorable Court having full and exclusive jurisdiction, Section 265 of the Judicial Code is not applicable to deprive this Honorable Court of the powers granted by Section 262 of the Judicial Code to protect its jurisdiction by issuing an injunction against the individual defendants herein.

This Court in the case of Sovereign Camp Woodmen of the World v. O'Neill, et al., 266 U. S. 293, 298, in discussing the application of Section 265 of the Judicial Code, said:

> "The jurisdiction thus acquired was not taken away by Section 265 of the Judicial Code, providing that, except in bankruptcy cases, 'the writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of

a State.' This section does not deprive a district court of the jurisdiction otherwise conferred by the federal statutes, but merely goes to the question of equity in the particular bill; making it the duty of the court, in the exercise of its jurisdiction, to determine whether the specific case presented is one in which relief by injunction is prohibited by this section or may nevertheless be granted."

To the same general effect are the cases of Gunter, Attorney General of the State of South Carolina v. Atlantic Coast Line Railroad Company, 200 U. S. 273, 291 Ex Parte Simon, 208 U. S. 145, Hunt v. New York Cotton Exchange, 205 U. S. 322, 338-339, and Simon v. Southern Railway Company, 236 U. S. 115.

In the case of Sand Springs Home, et al. v. Title Guarantee & Trust Company, 16 Fed. (2d) 917, 918, the Judge of the Circuit Court of Appeals of the 8th Circuit, said:

"In cases where the federal court may with propriety enjoin proceedings in the state court in order to protect its own jurisdiction or its own judgment, it may enjoin as well before the state court proceeding goes to judgment as afterward. Root v. Woolworth, 150 U. S. 401, 14 S. Ct. 136, 37 L. Ed. 1123; Julian v. Central Trust Co., 193 U. S. 93, 24 S. Ct. 399, 48 L. Ed. 629; Gunter v. Atlantic Coast Line, 200 U. S. 273, 26 S. Ct. 252, 50 L. Ed. 477; Wabash R. v. Adelbert College, 208 U. S. 38, 28 S. Ct. 182, 52 L. Ed. 379; Swift v. Black Panther Co., 244 F. 20 (C. C. A. 8); Hickey v. Johnson, 9 F. (2d) 498 (C. C. A. 8)."

Again in the same case the Court said:

"It is true that, notwithstanding the provisions of Section 265 of the Judicial Code, a federal court of equity will on a proper showing en-

General Assembly of Indiana and by legislation duly enacted by the General Assembly of Kentucky and the consent of the Congress of the United States was given to the execution thereof, as required by Article 1, Section 10, of the Constitution of the United States.

The rule seems to be well established that where a Federal Court has first obtained jurisdiction of a matter in controversy by the institution of a suit therein, it may restrain proceedings in any other court involving the same subject matter.

Under the provisions of Article 3, Section 2, of the Constitution of the United States, the Supreme Court of the United States has original and exclusive jurisdiction to determine the validity of the contract involved in the case at bar, and the Marion Superior Court of Marion County, Indiana, does not have jurisdiction of the parties to said contract and does not have jurisdiction to determine the validity thereof. Therefore, the Marion Superior Court of Marion County, Indiana, having no jurisdiction and this Honorable Court having full and exclusive jurisdiction, Section 265 of the Judicial Code is not applicable to deprive this Honorable Court of the powers granted by Section 262 of the Judicial Code to protect its jurisdiction by issuing an injunction against the individual defendants herein.

This Court in the case of Sovereign Camp Woodmen of the World v. O'Neill, et al., 266 U. S. 293, 298, in discussing the application of Section 265 of the Judicial Code, said:

> "The jurisdiction thus acquired was not taken away by Section 265 of the Judicial Code, providing that, except in bankruptcy cases, 'the writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of

a State.' This section does not deprive a district court of the jurisdiction otherwise conferred by the federal statutes, but merely goes to the question of equity in the particular bill; making it the duty of the court, in the exercise of its jurisdiction, to determine whether the specific case presented is one in which relief by injunction is prohibited by this section or may nevertheless be granted."

To the same general effect are the cases of Gunter, Attorney General of the State of South Carolina v. Atlantic Coast Line Railroad Company, 200 U. S. 273, 291 Ex Parte Simon, 208 U. S. 145, Hunt v. New York Cotton Exchange, 205 U. S. 322, 338-339, and Simon v. Southern Railway Company, 236 U. S. 115.

In the case of Sand Springs Home, et al. v. Tit[illegible] Guarantee & Trust Company, 16 Fed. (2d) 917, 9[illegible], the Judge of the Circuit Court of Appeals of the 8th Circuit, said:

"In cases where the federal court may with propriety enjoin proceedings in the state court in order to protect its own jurisdiction or its own judgment, it may enjoin as well before the state court proceeding goes to judgment as afterward. Root v. Woolworth, 150 U. S. 401, 14 S. Ct. 136, 37 L. Ed. 1123; Julian v. Central Trust Co., 193 U. S. 93, 24 S. Ct. 399, 48 L. Ed. 629; Gunter v. Atlantic Coast Line, 200 U. S. 273, 26 S. Ct. 252, 50 L. Ed. 477; Wabash R. v. Adelbert College, 208 U. S. 38, 28 S. Ct. 182, 52 L. Ed. 379; Swift v. Black Panther Co., 244 F. 20 (C. C. A. 8); Hickey v. Johnson, 9 F. (2d) 498 (C. C. A. 8)."

Again in the same case the Court said:

"It is true that, notwithstanding the provisions of Section 265 of the Judicial Code, a federal court of equity will on a proper showing en-

> join proceedings in a state court which would have the effect of defeating or impairing the jurisdiction of the federal court, or the orders or decrees which it has made. See cases cited supra."

In the case of the United States v. Babcock, et al., 6 Fed. (2d) 160, 161, the district court in considering the question of whether Section 265 of the Judicial Code could be applied in said case said:

> "While the Judicial Code provides that a writ of injunction shall not be granted in any court of the United States to stay proceedings in any state court, this court is of the opinion that this rule is not intended to apply to an action wherein the United States government is a party, and wherein it is necessary to issue such injunction to protect the interests of the government of the United States. Section 2, Article 3, of the Constitution provides, among other things, that the judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties, made, or which shall be made, under their authority, and to controversies to which the United States shall be a party. Clearly this provision of the Constitution is intended to give to the federal government jurisdiction, both in law and equity, where the United States is an interested party."

In the case of Pierce v. National Bank of Commerce of St. Louis, 282 Fed. 100, it was held that Section 265 of the Judicial Code was not applicable where the State court was without jurisdiction.

The same general effect also is the opinion in the case of St. Louis Min. and Mill. Company v. Montana Mining Company, 148 Fed. 450.

II

CHAPTER 53 OF THE ACTS OF THE GENERAL ASSEMBLY OF INDIANA OF 1919 AND CHAPTER 10 OF THE ACTS OF THE GENERAL ASSEMBLY OF INDIANA OF 1927, CONSIDERED IN CONNECTION WITH THE ACTS OF CONGRESS COPIED IN FULL IN THE BILL OF COMPLAINT AND AMENDED BILL OF COMPLAINT AS EXHIBITS "G" AND "H" RESPECTIVELY, CLEARLY AUTHORIZED THE STATE OF INDIANA TO EXECUTE SAID CONTRACT. THERE IS NO PROVISION IN THE CONSTITUTION OF INDIANA LIMITING THE OPERATION OR EFFECT OF SAID LEGISLATIVE ENACTMENTS. THERE IS NO PROVISION IN THE CONSTITUTION OF INDIANA PROHIBITING THE INDIANA STATE HIGHWAY COMMISSION OR OTHER OFFICERS OF INDIANA FROM EXPENDING PUBLIC FUNDS OF SAID STATE BEYOND THE BOUNDARY LIMITS OF SAID STATE.

We have carefully examined the provisions of the Constitution of the State of Indiana, and we find that there is no provision in said constitution limiting the expenditure of public funds of said State to expenditures within the boundaries thereof, or in paying for property or improvements acquired or made within said State. There being no provision in said State Constitution so limiting the power of the State, its General Assembly unquestionably had and has the power to expend money for public purposes outside of

the boundary limits of the State. Except as limited by its own State Constitution, its General Assembly has all powers which have not been delegated by the Constitution of the United States to the Federal government.

Chapter 10 of the Acts of the General Assembly of Indiana of 1927 was intended by said General Assembly to provide for the construction of a bridge across the Ohio river at or near Evansville, and was generally known as the Evansville Bridge Act, and is so indexed in the Acts of said General Assembly. The very language of said Act clearly shows that the General Assembly had in mind the construction of a bridge across the Ohio river at or near Evansville.

Section 1 of said Act provides that:

> "BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF INDIANA, That the state highway commission of the State of Indiana be, and it is hereby, authorized and empowered, in its discretion, *to construct a highway bridge over and across any river or other stream forming the boundary line between the State of Indiana and any state adjoining the State of Indiana, notwithstanding the waters of such rivers or streams may not at all times extend to or reach such boundary line, whenever such bridge or any part thereof, including the approaches thereto as a part thereof, will be within the State of Indiana and will directly connect any state or interstate highway now in existence or hereafter constructed within the State of Indiana with any interstate or other public highway now in existence or hereafter constructed in such adjoining state, and although such river or stream may be located either partially or wholly within the territorial limits of such adjoining state;* and that, in constructing and maintaining any such bridge, includ-

ing the approaches thereto as a part thereof, and in providing the necessary personal and real property and easements in real property which may be required for the proper, effective and convenient location, construction and operation of any such bridge, the said state highway commission be, and it is hereby, authorized and empowered to use and expend so much of the funds provided, or to be provided, by law for its use as may be found by it to be reasonably necessary for such purposes."

Said General Assembly, in order to be certain that the courts would not construe said Acts so as to in any way limit the powers already vested in the Indiana State Highway Commission, provided in Section 22 thereof that:

"This act shall at all times be construed as suplemental to and in aid of all other acts providing for the construction of highways and bridges."

So far as we have been able to find, in the absence of a constitutional provision to the contrary, the courts have uniformly held that a municipality or political sub-division may, with public funds, purchase or acquire property beneficial to the interests thereof either within or without its territorial limits.

In the case of The People ex rel. Henry C. Murphy, President, etc. v. Kelly, 76 N. Y. 475-487, the Supreme Court of New York held that a city purpose within the meaning of the constitutional provision of New York included not simply work or expenditure within the city limits but a public improvement which might be regarded as for the common benefit and enjoyment of all the citizens. It was claimed in that case that the City of New York could not, out of public funds raised by taxation, construct a bridge between the City of New York and Brooklyn over the East River. The court

held the construction of said bridge to be a proper municipal purpose even though said bridge was not wholly within the city limits. In the opinion in said case at pages 487 and 488 the Court said:

> "It would be a city purpose to purchase a supply of water outside of the city, and convey it into the city, and for such a purpose a city debt could be created. So lands for a park for the health and comfort of the inhabitants of a city could be purchased outside of the city limits, and yet conveniently near thereto. Such improvements are for the common and general benefit of all the citizens, and have always been regarded as within the scope of municipal government; and so, too, highways or streets leading into a city or village may be improved, provided the improvements be confined within such limits that they may be regarded as for the common benefit and enjoyment of all the citizens. It cannot therefore, well be held, as claimed by the learned counsel for the appellants, that what is meant by a city purpose, is some work or expenditure within the city limits. There could be no good reason for such a limitation. It could be no worse for a city to incur debt for a city purpose outside of the city limits than for one within such limits, and there is just as much reason for allowing it to be incurred in the one case as in the other. The cities of New York and Brooklyn are intimately connected in many ways, by business, social, and commercial ties. Thousands who do business in the one city, do business in the other. The port of New York includes the whole river at the place where the bridge is to be constructed, and the commerce from all parts of the world, which flows into that port, is discharged on each side of the river. To bridge such a water separating two such cities, must be a city purpose of each city. The bridge will be for the common benefit of all the citizens of both cities, and each citizen will have the same right to use it as every other citizen. It

would have been a city purpose if either city had been authorized to build the whole of the bridge, and it is no less so that both are to unite in building it. It has always been the policy of this State for two towns separated by a stream of water, to bridge the stream at joint expense, and the construction of such a bridge is a town purpose of each town."

In the case of Luxton v. North River Bridge Company, 153 U. S. 525, it is held that in aid of interstate commerce, the Federal government may use such agencies as it sees fit, that it can create a corporation for this purpose and can give to such a corporation power of condemnation in the several states involved, without any consent of those states. In that case the United States Congress had created a corporation to build a bridge across the Hudson River and had given it power of condemnation.

In the case of Hauessler v. City of St. Louis, et al., 103 S. W. 1034, the Supreme Court of Missouri held valid an act of the General Assembly of Missouri authorizing the City of St. Louis to construct a bridge across the Mississippi River to be used both for railroad and general traveling. The court held that the city of St. Louis could construct said bridge even though a part thereof was necessarily beyond the city limits. That was an action by taxpayers of the city of St. Louis attempting to enjoin the city officials from issuing $3,500,000 worth of bonds to be used to furnish money for the construction of the St. Louis bridge, including approaches one to two miles of length in the State of Illinois. An act of Congress had been passed authorizing the city of St. Louis to construct a bridge across the Mississippi River in aid of interstate commerce and giving to it the right of condemnation in ac-

quiring property in the State of Illinois. Many questions were raised in that case, most of which dealt with the local laws of the city of St. Louis and the State of Missouri. The court held that it was a proper municipal purpose to construct this bridge; that cities were not restricted to investing their money within their own boundaries, but may acquire parks, water systems, or any other necessary equipment beyond their boundaries, and that they could own and construct bridges beyond their limits. The court further held that Congress could grant to a private corporation, in aid of interstate commerce, right of condemnation in different states without state permission, and that the city of St. Louis being a public corporation could be granted this same right, and the Act of Congress conferring the powers granted authorized the city of St. Louis to make the investment as contemplated.

In the case of Latinette v. City of St. Louis, 201 Fed. 676, the court had before it an action brought by the city of St. Louis for the condemnation of lands needed by the St. Louis bridge in the State of Illinois. The Illinois property owner defended on the ground that the city of St. Louis had no power to condemn land in the State of Illinois and had no power to build a bridge in another state. That case was decided by the Seventh Circuit Court of Appeals, denying the claims of the property owner, and sustaining the right of the city to condemn the property, and sustaining the power of the city to build the bridge in the State of Illinois.

In the case of McMurray v. Kansas City, 223 S. W. 621, the Supreme Court of Missouri had before it a suit attacking the construction by the city of Kansas City of a sewer system, especially the outlet of the same which was constructed in the State of Kansas. The

power of the city to make this construction was upheld. The court reviewed the authorities at length on this point.

In the case of Ray v. Kansas City, 224 S. W. 136, the Supreme Court of Missouri held that the city of Kansas City had power to build a viaduct, part of which extended into the State of Kansas. The court in the opinion in that case cited a number of cases supporting its decision.

In the case of Klein v. City of Louisville, 6 S. W. (2d series) 1109, the Court of Appeals of Kentucky sustained the validity of the Act of the General Assembly of Kentucky empowering the city of Louisville to construct a bridge across the Ohio River into Indiana.

In the case of Dysart v. City of St. Louis, 11 S. W. (2d series) 1048, the Supreme Court of Missouri held that the city of St. Louis could legally spend its money to develop an airport outside of the city limits.

In the case of Freeman v. Trimble, 129 N. W. 88, the Supreme Court of North Dakota held that public drainage boards in North Dakota had authority to expend public funds in building a drainage system, part of which was an outlet in the Dominion of Canada. In that case it was contended that they did not have power to spend money in Canada, but the court denied this contention.

In the case of St. Paul v. Lamprecht Bros., 88 Fed. 453, the circuit court of appeals for the eighth circuit held that the city of St. Paul could build a bridge across the Mississippi River, part of which extended beyond the city limits.

In the case of Walker v. City of Cincinnati, 21 Ohio State, 14, it was held that the city of Cincinnati

could build a railroad extending from Cincinnati to Chattanooga, Tennessee.

In the case of City of Tacoma v. Titlow, 101 Pac. 827, the Supreme Court of Washington held that the city of Tacoma had power, out of public funds, to build a street beyond its city limits to reach shipping docks.

In the case of Booth v. City of Minneapolis, 203 N. W. 625, the Supreme Court of Minnesota held that the city of Minneapolis had power to acquire property for park purposes outside of its own city limits, and within the boundaries of another city.

In the case of Bronx Park Commission v. Hylan, 198 N. Y. 271, the Court held that the building of the Bronx highway outside of the city limits was a proper municipal expenditure.

In the case of Superior Water, Light & Power Company v. Superior, 183 N. W. 254, the Supreme Court of Wisconsin held that a city had the right to acquire property outside of its limits and within another city for water works purposes.

In the case of Langlon v. City of Walla Walla, 193 Pac. 1, the Supreme Court of Washington held that a city had the power to acquire property outside of its own limits and in another State for water works purposes.

A city may expend money for a public purpose without its boundaries, and the test as to whether or not it is a true public purpose does not depend upon the place where the money is expended but upon the purpose served. It has been held in many cases that expenditures without the boundary lines of the state were for true public purposes.

The same rule necessarily applies to states in the absence of constitutional provisions to the contrary; and there being no contrary constitutional provisions

in the State of Indiana, the rule must apply to said State.

The bridge to be constructed across the Ohio River, under the terms of the contract involved in the case at bar, will be partly in the State of Indiana and partly in the Commonwealth of Kentucky. The major span and the major part of said bridge will be over Kentucky soil, but it will form a connection between important trunk highways in Kentucky and important trunk highways in Indiana. Evansville being a large city and there being no large cities in Kentucky west of Louisville, it is certain that Indiana will benefit by the construction of said bridge, even though the major part thereof be over Kentucky soil, to as great an extent, if not greater, than Kentucky.

We respectfully submit that the contract involved in the case at bar is valid in all respects, and that the relief prayed for by the Commonwealth of Kentucky should in all things be granted.

Respectfully submitted,

J. W. CAMMACK,
Attorney General of Kentucky.
M. B. HOLIFIELD,
Assistant Attorney General of Kentucky.
CLIFFORD E. SMITH,
Assistant Attorney General of Kentucky.
Solicitors for Complainant.

FILE COPY

Supreme Court

COMMONWEALTH OF KENTUCKY, Complainant,

v.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT M. LOREY,
FRANK T. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER B. McCOOL, All Citizens of the State of Indiana, Defendants.

MOTION OF COMPLAINANT FOR LEAVE TO FILE SUPPLEMENTAL BRIEF

COMMONWEALTH OF KENTUCKY
By JAMES W. CAMBACK,
Attorney General of Kentucky,

E. E. BOLLETTER,
Assistant Attorney General, of Counsel,

CLIFFORD B. HOSKINS,
Assistant Attorney General of Kentucky,
Solicitors for the Commonwealth of Kentucky.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 18, Original.

IN EQUITY.

COMMONWEALTH OF KENTUCKY, - - Complainant,

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of Indiana, - - - - - - - - Defendants.

MOTION OF COMPLAINANT FOR LEAVE TO FILE SUPPLEMENTAL BRIEF.

The Commonwealth of Kentucky, by James W. Cammack, its Attorney General, moves this Honorable Court for leave to file Supplemental Brief herein.

COMMONWEALTH OF KENTUCKY,
By JAMES W. CAMMACK,
Attorney General of Kentucky,
M. B. HOLIFIELD,
Assistant Attorney General of Kentucky,
CLIFFORD E. SMITH,
Assistant Attorney General of Kentucky,
Solicitors for the Commonwealth of Kentucky.

FILE COPY

JAN 6 19
CHARLES ELMORE C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

NO. [redacted]GINAL.

COMMONWEALTH OF KENTUCKY, - - - - Complainant,

vs.

THE STATE OF INDIANA and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK H. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of
Indiana, - - - - - - - - - - Defendants.

AGREED STATEMENT OF FACTS.

J. W. CAMMACK,
Attorney General for
The Commonwealth of Kentucky.
JAMES OGDEN,
Attorney General for
the State of Indiana.
FRANK H. HATFIELD,
Of Attorneys for
the Individual Defendants.

Roberts Printing Co., Frankfort, Ky.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

NO. 16, ORIGINAL.

COMMONWEALTH OF KENTUCKY, - - *Complainant.*

vs.

THE STATE OF INDIANA and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK H. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL, All Citizens of the State of
of Indiana, - - - - - - - - *Defendants.*

AGREED STATEMENT OF FACTS.

It is hereby stipulated and agreed by and between all of the parties in the above-entitled cause, by and through their respective counsel, as follows:

1. That each and all of the allegations and statements made in sections 1 to 14 inclusive, in paragraph 1, pages 2 to 7 inclusive, of the Bill of Complaint are true.

2. That the Act intended to be referred to by complainant in section 15, paragraph 1, page 7 of the Bill of Complaint was an Act of Congress of the United States, approved March 2nd, 1927, which is copied in full on pages 5 to 7 inclusive, as Exhibit H, in the amended Bill of Complaint.

3. That the allegations of section 16, paragraph 1, page 7 of the Bill of Complaint are true, and that the contract referred to therein is fully and correctly copied on pages 8 to 31 inclusive, of the Bill of Complaint.

4. That the statements contained in section 17, paragraph 1, page 32 of the Bill of Complaint are true.

5. That the State of Indiana, by its State Highway Commission and proper officers, immediately began the performance of the covenants of said contract, after its execution, and said State and its said officers are now ready and anxious to perform said contract, and would do so but for certain litigation which has arisen involving the legality of said contract, between citizens of Indiana and the officers of said State, whose function it is to perform the covenants of said contract for the State of Indiana, on its part to be performed.

6. That each and all of the allegations in section 19, paragraph 1, pages 31 and 32 of the Bill of Complaint are true.

7. That since the filing of the Bill of Complaint herein, the officers of the State of Indiana, named as defendants in the action instituted by the individual defendants herein, in the Marion Superior Court of Marion County, Indiana, have appeared and filed certain pleadings in said cause as stated by the State of Indiana in its return to the rule to show cause why complainant's bill should not be filed, which return to rule was filed in this Court.

8. That each and all the allegations in section 21, paragraph 1, page 32 of the Bill of Complaint are true.

9. With reference to the allegations made in section 22, paragraph 1, page 33 of the Bill of Complaint, it is agreed that the State of Indiana will not perform

the covenants of said contract further until there is a final adjudication of said cause by the Supreme Court of Indiana or by this Honorable Court.

10. That it is of great interest and concern to the States of Indiana and Kentucky and the United States and the citizens thereof generally who will travel said Route 41, to have as early a determination of this litigation as is possible, consistent with the convenience of the Court.

11. With reference to the allegations made in section 27, paragraph 1, pages 35 and 36 of the Bill of Complaint, it is agreed that the blue prints and drawings filed herein correctly show the location approved for said bridge by the State of Indiana and the Commonwealth of Kentucky; that the boundary line between said states is correctly shown on said blue prints and drawings; that the location of the spans and bridge structures are correctly shown thereon, and that the approaches are also correctly shown thereon, including the type of construction of said approaches and the elevation thereof. It is also agreed that the high water lines at said points are correctly shown on said blue prints and drawings. It is also agreed that the blue prints and drawings correctly show the topography at the location of the bridge and its approaches.

12. With reference to the allegations made in section 32, paragraph 1, page 38 of the Bill of Complaint, it is agreed that the failure of the State of Indiana to promptly perform the covenants of said contract, on her part to be performed, has caused and will cause the Commonwealth of Kentucky and her citizens such injury and damage for which no adequate remedy at law exists, and that this action was brought and is being prosecuted on behalf of the Commonwealth of Kentucky and her citizens for the purpose of establishing the validity of said contract and her

rights therein and thereunder and for the purpose of protecting such rights of said Commonwealth and her citizens against whatever loss which they have or may sustain; that the Commonwealth of Kentucky is now and has been, at all times since the filing of the Bill of Complaint herein, ready, able and willing to perform the covenants of said contract on her part to be performed.

13. That the stipulations aforesaid, relative to and pertaining to paragraph 1 of the Bill of Complaint shall apply likewise to paragraph 2 of the Bill of Complaint, with the following additional stipulations relative to said paragraph 2.

14. That each and all of the allegations of section 33, paragraph 2, pages 39 and 40 of the Bill of Complaint are true.

15. That each of the allegations in section 35, paragraph 2, page 40 of the Bill of Complaint are true.

16. That each and all of the allegations made in section 36, paragraph 2, pages 40 and 41 of the Bill of Complaint are true.

17. That the Acts referred to in the Bill of Complaint and the amended Bill of Complaint are correctly and fully copied on pages numbered consecutively 43 to 100, both inclusive, of the Bill of Complaint, and pages 5 to 7, both inclusive, of the amended Bill of Complaint.

18. Relative to section 34, page 40 of the first paragraph of the Bill of Complaint, it is stipulated that there will be filed by the Highway Commission of the State of Indiana, a statement setting out what, if any, appropriation had been made by the General Assembly of the State of Indiana prior to the 12th day of September, 1928, of money for the construction of the bridge contemplated by said contract by said two State Commissions, and what money there was at that time

in the State Treasury of the State of Indiana, or will be on the 1st day of January, 1930, sufficient to enable the officers of the Indiana State Highway Commission to perform said contract, the statement to show the total amount of the general road fund appropriated by the General Assembly of Indiana for expenditure by the State Highway Commission of Indiana, during the biennial period in which September 12th, 1928, was embraced, and further show the total amounts of said funds expended by said Commission prior to September 12th, 1928, and the total amount of contractual obligations incurred prior to September 12th, 1928, to be paid during that biennial period from said fund. And, further, a separate statement will be filed showing the total amount of money appropriated by the General Assembly of Indiana for expenditure by the State Highway Commission of Indiana during the present biennial period and the total amounts expended by said Commission during the present biennial period and the total amounts of contractual obligations incurred by said Commission to January 1st, 1930, which are to be paid from said fund during the present biennial period, said statement to disclose what, if any, appropriation has been made by the General Assembly of the State of Indiana during any of the periods herein covered for the construction of the bridge contemplated in and by said contract between said State Highway Commissions.

19. That each and all of the allegations made by the State of Indiana in her return to the rule hereinabove referred to and in the answer filed herein by said State are true.

20. That the individual defendants in this action and the plaintiffs in said cause in the Superior Court of Marion County, Indiana, is each a citizen, voter, taxpayer of the State of Indiana, and the operator of an

automobile and pay taxes and also license fees for the operation of their automobiles to the State of Indiana.

J. W. CAMMACK,
Attorney General for
The Commonwealth of Kentucky.
JAMES OGDEN,
Attorney General for
the State of Indiana.
FRANK H. HATFIELD,
Attorneys for
the Individual Defendants.

FILE COPY

FILED
JAN 6 193
CHARLES ELMORE CR
CLE

IN THE

Supreme Court of the United States

NO. [redacted]GINAL [redacted]

COMMONWEALTH OF KENTUCKY, ... Complainant,

vs.

THE STATE OF INDIANA and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK H. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of
Indiana, ... Defendants.

MOTION FOR FURTHER HEARING.

J. W. CAMMACK,
Attorney General for
The Commonwealth of Kentucky.
JAMES OGDEN,
Attorney General for
the State of Indiana.
FRANK H. HATFIELD,
Of Attorneys for
the Individual Defendants.

Roberts Printing Co., Frankfort, Ky.

IN THE

Supreme Court of the United States

NO. 16, ORIGINAL.

COMMONWEALTH OF KENTUCKY, - - *Complainant.*

vs.

THE STATE OF INDIANA and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK H. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL, All Citizens of the State of
of Indiana, - - - - - - - - *Defendants.*

MOTION FOR FURTHER HEARING.

Comes now counsel for each of the parties to this proceeding and moves this Honorable Court that the matter be set down for further hearing on the merits of the case, upon the pleadings and agreed stipulation of facts.

J. W. CAMMACK,
Attorney General for
The Commonwealth of Kentucky.
JAMES OGDEN,
Attorney General for
the State of Indiana.
FRANK H. HATFIELD,
Attorneys for
the Individual Defendants.

FILED
MAR 1 1928

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928

NO. [redacted]IGINAL [redacted] 7

IN EQUITY

COMMONWEALTH OF KENTUCKY, - - - Complainant,

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of Indiana, - - - - - - - - - Defendants.

Statement of
THE INDIANA STATE HIGHWAY COMMISSION
Pursuant To Item 18 Of The "STIPULATION OF FACTS"

JAMES M. OGDEN,
Attorney General of Indiana.
CONNOR D. ROSS,
Asst. Attorney General of Indiana.

Roberts Printing Co., Frankfort, Ky.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928

NO. 16, ORIGINAL

IN EQUITY

COMMONWEALTH OF KENTUCKY, - - - *Complainant,*

Vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of
Indiana, - - - - - - - - - - *Defendants.*

STATEMENT OF THE INDIANA STATE HIGHWAY COMMISSION PURSUANT TO ITEM 18 OF THE "STIPULATION OF FACTS."

---

41 A 569
Bridge File

February 10, 1930.

Pursuant to Item 18 of the "Agreed Statement of Facts" heretofore filed in this cause, the defendant State of Indiana, through the State Highway Commission submits the following statement:

(1) "appropriation—made by the General Assembly of the State of Indiana prior to the 12th day of September, 1928, of money for the construction

of the bridge contemplated by said contract by said two State Commissions."

Specific appropriation	$13,700,000.00
Additional excess receipts appropriated	12,855,031.24
Total appropriation	$26,555,031.24

The figures for the specific appropriation are taken from the biennial Appropriation Act of 1927; those for the additional excess receipts are shown by the records of the Auditor of the State of Indiana. These additional excess receipts were also appropriated by the same Legislative Act. The total of these two above items represents the total appropriation for construction only. See "Addenda" for the Appropriation Act above cited.

(2) "what money there was at that time in the State Treasury of the State of Indiana—sufficient to enable the officers of the Indiana State Highway Commission to perform said contract" $2,387,122.07

The time referred to is the date of the contract between the Commonwealth of Kentucky and the State of Indiana; i. e. September 12, 1928. The above figures are taken from the records in the office of the Treasurer of the State of Indiana and represent the balance in the State Highway fund as of that date.

(3) "what money there—will be in the State Treasury of the State of Indiana on the first day of January, 1930, sufficient to enable the officers of the Indiana State Highway Commission to perform said contract" $811,322.19

The amount shown in this item is the balance shown by the records of the Treasurer of the State of Indiana as of January 1, 1930.

(4) "the statement to show the total amount of the general road fund appropriated by the General Assembly of Indiana for expenditure by the State Highway Commission of Indiana during the biennial period in which September 12, 1928, was embraced" $35,355,031.24

This item includes the total shown in Item No. 1 above plus the amounts specifically appropriated for maintenance, motor transport and administration being the other three departments of the Indiana Highway Commission.

(5) "and further show the total amounts of said funds expended by said Commission prior to September 12, 1928" $13,912,367.93

The tabulation of the amount stated in this item was made from records in the office of the Treasurer of the State of Indiana.

(6) "and the total amount of contractual obligations incurred prior to September 12, 1928, to be paid during that biennial period from said fund" $5,560,645.38

The above total of contractual obligations was payable during the biennial period which included September 12, 1928, if the work involved in these obligations was completed and accepted within that period.

(7) "the total amount of money appropriated by the General Assembly of Indiana for expenditure by the State Highway Commission of Indiana during the present biennial period."

Specific appropriations	$24,940,000.00
Estimated additional excess receipts appropriated	23,024,150.00
Estimated total appropriation	$47,964,150.00

The first above amount, $24,940,000.00, represents the total specific appropriations made by the Indiana General Assembly for 1929 for the biennial period ending September 30, 1931. The second item, $23,024,150.00, represents the estimated receipts in excess of the specific appropriations, based on the experience of the last six years, together with an increase of 50 per cent. in the Highway Commission's share of gasoline tax collections, which increase was also provided by the 1929 General Assembly.

(8) "the total amounts expended by said Commission during the present biennial period ——— to January 1, 1930" $4,794,366.50

(9) "total amount of contractual obligations incurred by said Commission to January 1, 1930, which are to be paid from said fund during the present biennial period" $5,476,219.56
Cement for road contracts 1,522,000.00

(To be furnished by the State) $6,998,219.56

The above total of contractual obligations is payable within the present biennial period if the work involved in outstanding contracts is completed and accepted within that period. The amount included for cement represents the cost of cement necessary to complete the work on outstanding contracts as of the above date and is likewise payable within the biennial period if the contracts are completed and accepted within that period.

(10) "what if any, appropriation has been made by the General Assembly of the State of Indiana during any of the periods herein covered for the construction of the bridge contemplated in and by said contract between said State Highway Commissions."

For biennial period ending September 30, 1929:

Specific Appropriation	$13,700,00.00	
Excess Receipts	12,855,031.24	
		$26,555,031.24
For biennial period ending September 30, 1931:		
Specific Appropriation	$16,000,000.00	
Estimated Excess Receipts	23,024,150.00	
		39,024,150.00
Total for entire period		$65,579,181.24

This amount includes the total amount stated in Item No. 1 above, together with the amount appropriated for construction by the General Assembly of 1929 for the present biennial period and including also the estimated additional excess receipts as shown in Item No. 7 above. All of these amounts are available for construction of any or all pavement and / or bridges.

The above statement is true and correct to the best of my knowledge and belief.

J. J. BROWN, Director,
Indiana State Highway Commission.

The above and foregoing statement is submitted by the defendant, State of Indiana, in compliance with Section 18 of the Stipulation of Facts.

JAMES M. OGDEN,
Attorney General of Indiana.
CONNOR D. ROSS,
Asst. Attorney General of Indiana.

ADDENDA

The provisions of the Appropriation Acts of the General Assembly of Indiana, referred to in the foregoing statement, are as follows:

"For the Indiana State Highway Commission:

For administration expenses, for the fiscal year beginning October 1, 1927, sixty-five thousand dollars ($65,000).

For administration expenses, for the fiscal year beginning October 1, 1928, sixty-five thousand dollars ($65,000).

For the construction of pavement and bridges, for the fiscal year beginning October 1, 1927, six million six hundred thousand dollars ($6,600,000).

For the construction of pavement and bridges, for the fiscal year beginning October 1, 1928, seven million one hundred thousand dollars ($7,100,000).

For maintenance of roads, bridges, fences, and markers, for the fiscal year beginning October 1, 1927, three million five hundred ninety-five thousand dollars ($3,595,000).

For maintenance of roads, bridges, fences, and markers, for the fiscal year beginning October 1, 1928, three million five hundred ninety-five thousand dollars ($3,595,000).

For motor transport division, for the fiscal year beginning October 1, 1927, seven hundred forty thousand dollars ($740,000).

For motor transport division, for the fiscal year beginning October 1, 1928, seven hundred forty thousand dollars ($740,000).

Provided, That the funds herein appropriated for the State Highway Commission are appropriated from the amount of fees received from automobile license fees and gasoline license fees, and credited to the general fund of the state and made available for the State High-

way Commission as provided by statute: and, Provided, further, That the expenditures from the funds herein appropriated shall not exceed the amount made available for the State Highway Commission from the receipts of automobile license fees as provided by Chapter 213, section 8, of the acts of 1925, and the amount made available for the State Highway Commission from the receipts of gasoline license fees as provided by chapter 146, section 2, of the acts of 1925: and Provided, further, That should the amounts made available for the State Highway Commission from said automobile license fees and said gasoline license fees exceed the funds herein appropriated to the State Highway Commission, the said excess of such license fees and all receipts, reimbursements and collections of the State Highway Commission paid into the general fund of the state, including moneys from the United States Government, are hereby appropriated in addition to the sums herein appropriated and shall be added to the appropriation herein made for the construction of pavement and bridges: and, Provided, further, That if there be a balance left in any of said appropriations at the close of the fiscal year, said balance is hereby reappropriated to be added to the budgeted appropriation for the next fiscal year."

Acts of 1927, Chapter 121, pp. 381-383.

"For the Indiana State Highway Commission:

For administration expenses, for the fiscal year beginning October 1, 1929, seventy thousand dollars ($70,000).

For administration expenses, for the fiscal year beginning October 1, 1930, seventy thousand dollars ($70,000).

For the construction of pavement and bridges, for the fiscal year beginning October 1, 1929, eight million dollars ($8,000,000): Provided,

That sixty thousand dollars ($60,000) may be expended from this appropriation for the construction of a testing laboratory and equipment.

For the construction of pavement and bridges, for the fiscal year beginning October 1, 1930, eight million dollars ($8,000,000).

For maintenance of roads, bridges, fences, markers, and motor transport, for the fiscal year beginning October 1, 1929, four million four hundred thousand dollars ($4,400,000).

For maintenance of roads, bridges, fences, markers, and motor transport, for the fiscal year beginning October 1, 1930, four million four hundred thousand dollars ($4,400,000).

Provided, That the funds herein appropriated for the State Highway Commission are appropriated from the amount of fees received from automobile license fees and gasoline license fees, and credited to the general fund of the state and made available for the State Highway Commission as provided by statute: and, Provided, further, That the expenditures from the funds herein appropriated shall not exceed the amount made available for the State Highway Commission from the receipts of automobile license fees as provided by chapter 213, section 8, of the Acts of 1925, and the amount made available for the State Highway Commission from the receipts of gasoline license fees as provided by chapter 146, section 2, of the Acts of 1925: and, Provided, further, That should the amounts made available for the State Highway Commission from said automobile license fees and said gasoline license fees exceed the funds herein appropriated to the State Highway Commission, the said excess of such license fees and all receipts, reimbursements and collections of the State Highway Commission paid into the general fund of the state, including moneys

from the United States Government, are hereby appropriated in addition to the sums herein appropriated and shall be added to the appropriation herein made for the construction of pavement and bridges."

Acts of 1929, Chapter 116, pp. 361-362.

See also Interstate Bridge Act and Indiana State Highway Act:

Acts of 1927, Chapter 10, Complainant's Bill of Complaint, Exhibit A, p. 43;

Acts of 1919, Chapter 53, Complainant's Bill of Complaint, Exhibit B, p. 57;

Section 31, Clause (h), Act last cited.

FILE COPY

MAY 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929

NO. [redacted]GINAL [redacted]

IN EQUITY.

COMMONWEALTH OF KENTUCKY, . Complainant

vs.

THE STATE OF INDIANA, ET AL., . Defendants

DECREE

JAMES M. OGDEN,
Attorney General of Indiana,
CONNOR D. ROSS,
Assistant Attorney General of Indiana,
J. W. CAMMACK,
Attorney General of Kentucky,
CLIFFORD E. SMITH,
Assistant Attorney General of Kentucky.

Roberts Printing Co., Frankfort, Ky.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929

NO. 16, ORIGINAL

IN EQUITY.

COMMONWEALTH OF KENTUCKY, . . . *Complainant,*

VS.

THE STATE OF INDIANA, ET AL., ... *Defendants.*

DECREE

THIS CAUSE came on to be heard upon the pleadings, stipulation of facts, and briefs and was argued by counsel. The Court now being fully advised in the premises, and for the purpose of carrying into effect the conclusion set forth in the opinion of this Court announced April 14, 1930, (——U. S.——).

IT IS NOW HERE ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. That the bill of complaint as amended be, and it hereby is, dismissed as against the individual defendants, James Duane Duncan, Claude F. Johnson, Walter L. Brandt, Robert N. Losey, Frank H. Hatfield, Todd Stoops, John F. Carson, Robert E. Rogers, and Lester R. McCool.

2. That the defendant, the State of Indiana, and each of its officers, agents, and servants, and all persons assuming to act under authority of either of them, be, and they hereby are, enjoined from delaying, attempting to delay, failing or refusing to promptly and

in good faith perform or cause to be performed the covenants, on the part of the State of Indiana to be performed, of the agreement made and entered into by and between the Commonwealth of Kentucky, through and by the State Highway Commission of Kentucky, and the State of Indiana, through and by the Indiana State Highway Commission, of date September 12, 1928, which provides for the construction by the State of Indiana of a bridge across the Ohio River between Evansville, Indiana, and Henderson, Kentucky, at the point designated in the plans and specifications referred to in said contract.

3. That the defendant, the State of Indiana, its officers, agents, servants, and all persons assuming to act under the authority of either of them, be, and they hereby are, directed to immediately resume, in good faith, the performance of each and all of the covenants of said contract, on its part to be performed, according to its terms, and to continue the performance thereof until each and all of said covenants shall have been fully performed.

4. That the defendant, the State of Indiana, through and by its State Highway Commission, shall proceed at once with the completion of the plans and specifications for said bridge, and shall advertise and let a contract or contracts for the construction thereof as soon as practicable after the Commonwealth of Kentucky shall have made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract, of date September 12, 1928. The said Indiana State Highway Commission hereby is expressly directed to act and proceed for and on behalf of the State of Indiana in promptly and expeditiously complying with the terms of this decree.

5. That the defendant, the State of Indiana, by and through its State Highway Commission, shall file with the Clerk of this Court semiannually on September 1st and March 1st of each year, beginning September 1, 1930, a report to this Court adequately setting forth the progress made in the construction of said bridge and in the performance of the covenants of said contract on the part of the State of Indiana to be performed, during the period from the entry of this decree down to the date of such report.

6. That the complainant, Commonwealth of Kentucky, may, irrespective of the filing of the described reports, apply to this Court for any further action or relief, and this Court retains jurisdiction of the above entitled suit for the purpose of any order or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject matter in controversy.

AND IT IS FURTHER ORDERED that the costs in this case shall be taxable one-half against the State of Indiana and one-half against the Commonwealth of Kentucky.

The foregoing form of decree is respectfully submitted to the Court with the request that it be approved.

JAMES M. OGDEN,
Attorney General of Indiana.

CONNOR D. ROSS,
Assistant Attorney General of Indiana.

J. W. CAMMACK,
Attorney General of Kentucky.

CLIFFORD E. SMITH,
Assistant Attorney General of Kentucky.

FILE COPY

FILE
SEP 2
CHARLES ELMORE

IN THE

Supreme Court of the United States

No. 15 ORIGINAL

IN EQUITY.

COMMONWEALTH OF KENTUCKY - - Complainant,

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of Indiana, - - - - - - - - - - Defendants.

REPORT No. 1.

BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

STATE OF INDIANA,
JAMES M. OGDEN,
Attorney General of Indiana,
CONNOR D. ROSS,
Assistant Attorney General of Indiana,
Solicitors for the State of Indiana.

FT. WAYNE PTG. CO. FT. WAYNE, IND.

IN THE

Supreme Court of the United States

No. 16 ORIGINAL

IN EQUITY.

COMMONWEALTH OF KENTUCKY - - - - *Complainant,*

vs.

THE STATE OF INDIANA, AND
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL, ALL CITIZENS OF THE
STATE OF INDIANA - - - - - - - - - *Defendants.*

REPORT No. 1.

BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

To the Honorable Charles Elmore Cropley, Clerk of the Supreme Court of the United States:

Upon the entry of the decree of the Supreme Court on May 19, 1930, the State of Indiana, through and by its State Highway Commission, proceeded at once with the work of completing plans and specifications for said bridge as set out below.

For the preparation of plans and specifications and work of construction the project has been divided into 6 proposed contracts and the work done from May 19, 1930, to September 1, 1930, so divided in this report.

Proposed Contract No. 1, which is to include the five main river piers, designated as Piers A to E inclusive.

(a) The contract plans for this work have been completed by the consulting engineers, approved and adopted by the Indiana State Highway Commission and submitted to the Kentucky Highway Commission and to the U. S. Bureau of Public Roads for their respective approvals.

(b) The form of invitation to tender, the form of proposal, the form of contract, the form of proposal and contract bond, and the specifications for this work have been completed by the consulting engineers, have been printed and bound, approved as to legality and form by the Attorney General of Indiana, approved and adopted by the Indiana State Highway Commission, and submitted to the Kentucky Highway Commission and the U. S. Bureau of Public Roads for their respective approvals.

(c) Plans showing the location and amount of right of way required for this work have been prepared and transmitted to the Kentucky Highway Commission for their approval and the securing of the right of way by them as provided in the contract.

Proposed Contract No. 2, which is to include the long span steel cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E.

(a) The contract plans for this work have been completed by the consulting engineers, approved and

adopted by the Indiana State Highway Commission and submitted to the Kentucky Highway Commission and to the U. S. Bureau of Public Roads for their respective approvals.

(b) The form of invitation to tender, the form of proposal, the form of contract and the form of proposal and contract bond have been completed. The specifications are 90 per cent completed ready for printing, the remainder require a final revision and check, before being ready for printing and binding.

(c) Plans showing the location and amount of right of way required for this work have been prepared and transmitted to the Kentucky Highway Commission for their approval and the securing of the right of way by them as provided in the contract.

Proposed Contract No. 3, which is to include the remaining piers and abutments of the bridge.

(a) The contract plans for this work have been completed by the consulting engineers, approved and adopted by the Indiana State Highway Commission and submitted to the Kentucky Highway Commission and to the U. S. Bureau of Public Roads for their respective approvals.

(b) The form of invitation to tender, the form of proposal, the form of proposal and contract bond and the specifications for this work have been completed by the consulting engineers, and have been printed and bound ready for final check and formal approval.

(c) Plans showing the location and amount of right of way required for this work have been prepared and transmitted to the Kentucky Highway

Commission for their approval and the securing of the right of way by them as provided in the contract.

Proposed Contract No. 4, which is to include the remainder of the steel superstructure of the bridge.

(a) The contract plans for this work have been completed by the consulting engineers, approved and adopted by the Indiana State Highway Commission and submitted to the Kentucky Highway Commission and to the U. S. Bureau of Public Roads for their respective approvals.

(b) The form of invitation to tender, the form of proposal, the form of contract and the form of proposal and contract bond have been completed. The specifications are 90 per cent completed ready for printing, the remainder require a final revision and check, before being ready for printing and binding.

(c) Plans showing the location and amount of right of way required for this work have been prepared and transmitted to the Kentucky Highway Commission for their approval and the securing of the right of way by them as provided in the contract.

Proposed Contract No. 5, which is to include the earth embankment approaches and small structures and the pavement surface thereon.

(a) Borrow pit surveys have been made and quantities calculated.

(b) Plans for this contract have been advanced nearly to completion, but still require final check and correction before they will be ready for formal approval.

(c) Plans showing the location and right of way

required for this work have been prepared and transmitted to the Kentucky Highway Commission and to the County Commissioners of Vanderburg County, Indiana.

Proposed Contract No. 6, which is to include the larger bridges providing openings for flood waters in sloughs and small streams through the embankment approaches.

(a) Situation plans have been prepared and progress has been made and is being made on studies to determine the size and extent of these openings and the most efficient and economical type of structures to be used.

The Indiana State Highway Commission has had at all times during this period and now has a reserve of funds appropriated by the General Assembly of Indiana for road and bridge construction during the fiscal year beginning October 1, 1930, and ending September 30, 1931, in excess of all contract obligations and not allocated to any specific work, more than sufficient to pay all of its share of the cost of this project and to meet all of its obligations under the contract, such funds being available for allocation for these purposes as soon as the Commonwealth of Kentucky shall have made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928.

Dated at Indianapolis, Indiana, August 30, 1930.

Respectfully submitted,

JOHN J. BROWN,
Director, Indiana State Highway Commission.

* * *

The above and foregoing report, made by the Indiana

State Highway Commission, through its said Director, for and on behalf of the Defendant, State of Indiana, in accordance with clause 5 of the decree of May 19, 1930, of the Supreme Court of the United States in said cause is—

Respectfully submitted,

JAMES M. OGDEN,
Attorney General of Indiana.

CONNOR D. ROSS,
Assistant Attorney General.

FILE COPY

FILED
MAR 2 19
CHARLES ELMORE C

IN THE

Supreme Court of the United States

No. [redacted] ORIGINAL

IN EQUITY

87

COMMONWEALTH OF KENTUCKY - - Complainant,

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of Indiana, - - - - - - - - - - Defendants.

REPORT No. 2.

BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

STATE OF INDIANA,
JAMES M. OGDEN,
Attorney General of Indiana,

CONNOR D. ROSS,
Assistant Attorney General of Indiana,
Solicitors for the State of Indiana.

FT. WAYNE PTG. CO. FT. WAYNE, IND.

IN THE

Supreme Court of the United States

No. 16 ORIGINAL
IN EQUITY

COMMONWEALTH OF KENTUCKY - - - - *Complainant,*

vs.

THE STATE OF INDIANA, AND
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL, ALL CITIZENS OF THE
STATE OF INDIANA - - - - - - - - *Defendants.*

REPORT No. 2.

BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

To the Honorable Charles Elmore Cropley, Clerk of the Supreme Court of the United States:

Upon the entry of the decree of the Supreme Court on May 19, 1930, the State of Indiana, through and by its State Highway Commission, proceeded at once with the work of completing plans and specifications for said bridge as set out below.

For the preparation of plans and specifications and work of construction the project has been divided into 6

proposed contracts and the work done from May 19, 1930 to March 1, 1931, so divided in this report.

Contract No. 1, which includes the five main river piers, designated as Piers A to E inclusive.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930 competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930 by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of the necessary right of way in Kentucky) awarded a construction contract to the low bidder, the Kansas City Bridge Company, Kansas City, Mo., at a contract price of $466,800.00.

(c) Having been advised on December 13, 1930 that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Kansas City Bridge Company.

(d) Pursuant to its construction contract the said Kansas City Bridge Company has assembled equipment and materials at the bridge site and is actively prosecuting the construction of this work.

Contract No. 2, which includes the long span steel cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930 competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930 by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of the necessary right of way in Kentucky) awarded a construction contract to the low bidder, the American Bridge Company, Pittsburg, Pa., at a contract price of $675,-945.00.

(c) Having been advised on December 13, 1930 that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid American Bridge Company.

(d) Pursuant to its construction contract the said American Bridge Company has proceeded with the preparation of shop plans, erection plans, and the making of other preparations for the erection of

steel as soon as the work of Contract No. 1 shall have progressed sufficiently.

Contract No. 3, which includes the remaining piers and abutments of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930 competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930 by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of the necessary right of way in Kentucky) awarded a construction contract to the low bidder, Rieth-Riley Construction Company, Goshen, Indiana, at a contract price of $197,500.00.

(c) Having been advised on December 13, 1930 that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Rieth-Riley Construction Company.

(d) Pursuant to its construction contract the said Rieth-Riley Construction Company is assembling equipment and materials at the bridge site and is

beginning the active construction of the work included in its contract.

Contract No. 4, which includes the remainder of the steel superstructure of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930 competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930 by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on December 4, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of the necessary right of way in Kentucky) awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $260,750.00.

(c) Having been advised on December 13, 1930 that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 18, 1930, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the said Globe Construction Company has proceeded with the preparation of shop plans, erection plans and the

making of other preparations for the erection of steel as soon as the work of Contract No. 3 shall have progressed sufficiently.

Proposed Contract No. 5, which is to include the earth embankment approaches and small structures and the pavement surface thereon.

(a) Borrow pit surveys have been made and quantities calculated.

(b) Plans for this contract were completed and on November 20, 1930, were transmitted to the Kentucky Highway Commission for approval. Pursuant to suggestions from Kentucky received January 7, 1931, these plans were revised and again submitted on February 16, 1931 to the Kentucky Highway Commission for approval.

(c) The aforesaid plans show the location and amount of all right of way to be secured in Indiana, and the work of securing this right of way can be started as soon as these plans have been approved by the Kentucky Highway Commission and recommended for approval by the District Engineer of the U. S. Bureau of Public Roads.

Proposed Contract No. 6, which is to include four larger bridges providing openings for flood waters in sloughs and small streams through the embankment approaches.

(a) Plans for this contract have been advanced nearly to completion but still require final check and correction before they will be ready for formal approval.

Dated at Indianapolis, Indiana, February 28, 1931.

Respectfully submitted,

JOHN J. BROWN,
Director, Indiana State Highway Commission.

The above and foregoing report, made by the Indiana State Highway Commission, through its said Director, for and on behalf of the Defendant, State of Indiana, in accordance with clause 5 of the decree of May 19, 1930, of the Supreme Court of the United State in said cause is—

Respectfully submitted,

JAMES M. OGDEN,
Attorney General of Indiana.

CONNOR D. ROSS,
Assistant Attorney General.

Office Supreme C
FILE
AUG 29
CHARLES ELMORE

FILE COPY

IN THE

Supreme Court of the United States

No. 87 Original
IN EQUITY

87

COMMONWEALTH OF KENTUCKY - - Complainant,
vs.
THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER, R. McCOOL, All Citizens of the State of Indiana, - - - - - - - - - - Defendants.

REPORT No. 3

BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 of the DECREE OF MAY 19, 1930.

STATE OF INDIANA,
JAMES M. OGDEN,
Attorney General of Indiana,
CONNOR D. ROSS,
Assistant Attorney General of Indiana,
SOLICITORS for the
State of Indiana.

FT. WAYNE PTG. CO. FT. WAYNE, IND.

IN THE

Supreme Court of the United States

No. 16 Original

IN EQUITY

COMMONWEALTH OF KENTUCKY - - - *Complainant,*

vs.

THE STATE OF INDIANA, AND
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL, ALL CITIZENS OF THE
STATE OF INDIANA, - - - - - - - *Defendants.*

REPORT No. 3

BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

To the Honorable Charles Elmore Cropley, Clerk of the Supreme Court of the United States:

Upon the entry of the decree of the Supreme Court on May 19, 1930, the State of Indiana, through and by its State Highway Commission, proceeded at once with the

work of completing plans and specifications for said bridge and with the award of contracts and the work of construction as set out below.

For the preparation of plans and specifications and work of construction the project has been divided into 8 proposed contracts and the work done from May 19, 1930 to September 1, 1931, so divided in this report.

CONTRACT NO. 1, which includes the five main river piers, designated as Piers A to E inclusive.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930 competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930 by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction contract to the low bidder, the Kansas City Bridge Company, Kansas City, Mo., at a contract price of $466,800.00.

(c) Having been advised on December 13, 1930 that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, ex-

ecuted a construction contract with the aforesaid Kansas City Bridge Company.

(d) Pursuant to its construction contract the Kansas City Bridge Company has proceeded with construction of the five main piers. Piers A, C and D are now completed ready for steel erection. Pier B is founded on rock and is approximately two-thirds completed, and Pier E is being sunk to rock and is approximately two-thirds completed. This work is being rapidly pushed to completion.

CONTRACT NO. 2, which includes the long span steel cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930 competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930 by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction contract to the low bidder, the American Bridge Company, Pittsburg, Pa., at a contract price of $675,945.00.

(c) Having been advised on December 13, 1930 that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid American Bridge Company.

(d) Pursuant to its construction contract the said American Bridge Company has proceeded with the preparation of shop plans and erection plans and with the fabrication of structural steel, and the assembling of fabricated steel, equipment and personnel at the site. This company is now actively engaged in fabricating additional steel work, in constructing erection bents, and other construction facilities and in starting the erection of the steel superstructure.

CONTRACT NO. 3, which includes the remaining piers and abutments of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930 competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930 by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control

(including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction contract to the low bidder, Rieth-Riley Construction Company, Goshen, Indiana, at a contract price of $197,500.00.

(c) Having been advised on December 13, 1930 that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract. the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Rieth-Riley Construction Company.

(d) Pursuant to its construction contract the said Rieth-Riley Construction Company has proceeded with the construction of the approach piers and abutments. Approximately two-thirds of these piers and abutments are ready to receive the steel superstructure. All pile driving is completed and all concrete work on this contract is substantially complete with the exception of removing forms, finishing surfaces and cleaning up the work. The remaining work is being rapidly completed.

CONTRACT NO. 4, which includes the remainder of the steel superstructure of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930 competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930 by the Kentucky Highway Commission that the

Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on December 4, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $260,750.00.

(c) Having been advised on December 13, 1930 that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 18, 1930, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the said Globe Construction Company has proceeded with the preparation of shop plans and erection plans, and the fabrication and delivery of structural steel. Substantially all of the steel work with the exception of the pipe handrail has been completely fabricated and delivered at the site. Erection was started in August and approximately half of the steel is erected in place. Erection of steel, riveting and preparations for placing the concrete floor are being actively prosecuted.

CONTRACT NO. 5, which includes the earthwork and small structures for the earth embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on March 31, 1931 competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 23, 1931 the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana) awarded a construction contract to the low bidder, the Scharl Construction Company, Grand Rapids, Michigan, at a contract price of $188,221.47.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way the Director of the Indiana State Highway Commission as of June 19, 1931, executed a construction contract with the aforesaid Scharl Construction Company.

(d) Pursuant to its construction contract the said Scharl Construction Company has assembled construction equipment and forces and is actively prosecuting this work.

CONTRACT NO. 6, which includes two larger bridges providing openings for flood waters in sloughs across the embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative

to rights of way (in both Kentucky and Indiana) awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $97,044.40.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the said Globe Construction Company has assembled construction equipment, material and forces ready to start the active prosecution of this work.

CONTRACT NO. 7, which includes one large bridge providing an opening for flood waters in sloughs across the north embankment approach and one small bridge over a stream crossing the north embankment approach.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in Indiana) awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $134,865.66.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of

way the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the said Globe Construction Company has assembled construction equipment, material and forces and is actively prosecuting this work.

PROPOSED CONTRACT NO. 8, which includes the pavement on the earth embankment approaches.

(a) Plans for this contract have been completed and approved, subject to final revision when the embankment approaches are ready to receive pavement.

GENERAL—The Kentucky State Highway Commission states that all right of way required for this project in Kentucky has been acquired by agreement or is in process of condemnation. All right of way required for this project in Indiana has been acquired by agreement or condemned.

Dated at Indianapolis, Indiana, August 25, 1931.

Respectfully submitted,

John J. Brown,

Director,

Indiana State Highway Commission.

The above and foregoing report, made by the Indiana State Highway Commission, through its said Director, for and on behalf of the Defendant, State of Indiana, in ac-

cordance with clause 5 of the decree of May 19, 1930, of the Supreme Court of the United States in said cause is—

Respectfully submitted,

JAMES M. OGDEN,
Attorney General of Indiana.

CONNOR D. ROSS,
Assistant Attorney General.

FILE COPY

FEB

IN THE

Supreme Court of the United States

No. 1 Original

IN EQUITY

COMMONWEALTH OF KENTUCKY - - Complainant,

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of Indiana, - - - - - - - - - - - Defendants.

REPORT No. 4

BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 of the DECREE OF MAY 19, 1930.

STATE OF INDIANA,
JAMES M. OGDEN,
Attorney General of Indiana.
CONNOR D. ROSS,
Assistant Attorney General of Indiana,
SOLICITORS for the State of Indiana.

Wm. B. Burford Printing Co., Indianapolis

IN THE

Supreme Court of the United States

No. 16 Original

IN EQUITY

COMMONWEALTH OF KENTUCKY - - - *Complainant,*

vs.

THE STATE OF INDIANA, AND
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL, ALL CITIZENS OF THE
STATE OF INDIANA, - - - - - - - *Defendants.*

REPORT No. 4

BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

To the Honorable Charles Elmore Cropley, Clerk of of the Supreme Court of the United States:

Upon the entry of the decree of the Supreme Court on May 19, 1930, the State of Indiana, through and by its

State Highway Commission, proceeded at once with the work of completing plans and specifications for said bridge and with the award of contracts and the work of construction as set out below.

For the preparation of plans and specifications and work of construction the project has been divided into 8 proposed contracts and the work done from May 19, 1930 to March 1, 1932, so divided in this report.

CONTRACT NO. 1, which includes the five main river piers, designated as Piers A to E inclusive.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction contract to the low bidder, the Kansas City Bridge Company, Kansas City, Mo., at a contract price of $466,800.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for

this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Kansas City Bridge Company.

(d) Pursuant to its construction contract the Kansas City Bridge Company has proceeded with and has completed the construction of the five main piers, and has received full and final payment therefor.

CONTRACT NO. 2, which includes the long span steel cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction contract to the low bidder, the American Bridge Company, Pittsburgh, Pa., at a contract price of $675,945.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for

occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid American Bridge Company.

(d) Pursuant to its construction contract, the American Bridge Company has proceeded with and has completed the fabrication and delivery of structural steel and has erected over ninety per cent of this structural steel. The erection of the remaining steel and preparations for placing the concrete floor are proceeding as rapidly as weather and high water conditions will permit.

CONTRACT NO. 3, which includes the remaining piers and abutments of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control, (including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction contract to the low bidder, Rieth-Riley Construction

Company, Goshen, Indiana, at a contract price of $197,500.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Rieth-Riley Construction Company.

(d) Pursuant to its construction contract the Rieth-Riley Construction Company has proceeded with and has completed the construction of the approach piers and abutments and has received full and final payment therefor.

CONTRACT NO. 4, which includes the remainder of the steel superstructure of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on December 4, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction

contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $260,750.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 18, 1930, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the Globe Construction Company has proceeded with and has completed the construction of the approach superstructure, except for a small amount of painting and cleanup work, which is being prosecuted as rapidly as weather conditions and water levels permit.

CONTRACT NO. 5, which includes the earthwork and small structures for the earth embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on March 31, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 23, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana) awarded a construction contract to the low bidder, the Scharl Construction Company, Grand Rapids, Michigan, at a contract price of $188,221.47.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way the Director of the Indiana State Highway Commission as of June 19, 1931, executed a construction contract with the aforesaid Scharl Construction Company.

(d) Pursuant to its construction contract the said Scharl Construction Company has proceeded with the construction of the earth embankment approaches, and has completed approximately 55 per cent of this earthwork. High water from the Ohio River has flooded the borrow pits and forced the suspension of this work until water levels and weather conditions permit it to be resumed.

CONTRACT NO. 6, which includes two larger bridges providing openings for flood waters in sloughs across the embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana) awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $97,044.40.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of

way the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the said Globe Construction Company has proceeded with and completed the construction of the substructures of these overflow bridges, and has made preparations for the construction of the superstructures. The sites of these structures have been flooded and work has been suspended until water levels and weather conditions permit it to be resumed.

CONTRACT NO. 7, which includes one large bridge providing an opening for flood waters in sloughs across the north embankment approach and one small bridge over a stream crossing the north embankment approach.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in Indiana) awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $134,865.66.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of

way the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the said Globe Construction Company has proceeded with and has completed the construction of the substructure of the large overflow structure, has prepared form supports and started the construction of forms for the superstructure and has proceeded with the construction of the substructure of the small bridge. The sites of these structures have been flooded and work has been suspended until water levels and weather conditions permit it to be resumed.

PROPOSED CONTRACT NO. 8, which includes the pavement on the earth embankment approaches.

(a) Plans for this contract have been completed and approved for several months. These plans are now undergoing minor final revisions and special specifications and contract papers are being drawn up in preparation for receiving bids on this work at an early date.

GENERAL—The Kentucky State Highway Commission states that all right of way required for this project in Kentucky has been acquired by agreement or condemnation.

All right of way required for this project in Indiana has been acquired by agreement or condemned.

Dated at Indianapolis, Indiana, February 25, 1932.

Respectfully submitted,

John J. Brown,
Director,
Indiana State Highway
Commission.

The above and foregoing report, made by the Indiana State Highway Commission, through its said Director, for and on behalf of the Defendant, State of Indiana, in accordance with clause 5 of the decree of May 19, 1930, of the Supreme Court of the United States in said cause is

Respectfully submitted,

JAMES M. OGDEN,
Attorney General of Indiana.
CONNOR D. ROSS,
Assistant Attorney General.

FILE COPY

FILED

OCT 8 1932

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

No. 7 ORIGINAL

IN EQUITY

COMMONWEALTH OF KENTUCKY - - Complainant,

vs.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of Indiana, - - - - - - - - - Defendants.

REPORT No. 5.

BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

STATE OF INDIANA,
JAMES M. OGDEN,
Attorney General of Indiana,
CONNOR D. ROSS,
Assistant Attorney General of Indiana,
Solicitors for the State of Indiana.

Wm. B. Burford Printing Co., Indianapolis

IN THE

Supreme Court of the United States

No. 16 ORIGINAL

IN EQUITY

COMMONWEALTH OF KENTUCKY, - - - *Complainant,*

vs.

THE STATE OF INDIANA, AND
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. MCCOOL, ALL CITIZENS OF THE
STATE OF INDIANA, - - - - - - *Defendants.*

REPORT No. 5.

BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

To the Honorable Charles Elmore Cropley, Clerk of the Supreme Court of the United States:

Upon the entry of the decree of the Supreme Court on May 19, 1930, the State of Indiana, through and by its State Highway Commission, proceeded at once with the

work of completing plans and specifications for said bridge and with the award of contracts and the work of construction as set out below.

For the preparation of plans and specifications and work of construction of the project has been divided into nine proposed contracts and the work done from May 19, 1930, to March 1, 1932, so divided in this report.

Contract No. 1, which includes the five main river piers, designated as Piers A to E, inclusive.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction contract to the low bidder, the Kansas City Bridge Company, Kansas City, Mo., at a contract price of $466,800.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission, as of December 13, 1930, executed a construction contract with the aforesaid Kansas City Bridge Company.

(d) Pursuant to its construction contract the Kansas City Bridge Company has proceeded with and has completed the construction of the five main piers, and has received full and final payment therefor.

Contract No. 2, which includes the long span steel cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction contract to the low bidder, the American Bridge Company, Pittsburgh, Pa., at a contract price of $675,943.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid American Bridge Company.

(d) Pursuant to its construction contract, the American Bridge Company has proceeded with and has completed the construction of the long span cantilever superstructure (including concrete floors and navigation lights) of four spans from Pier A to Pier E and has received full and final payment therefor.

Contract No. 3, which includes the remaining piers and abutments of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, Rieth-Riley Construction Company, Goshen, Indiana, at a contract price of $197,500.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Rieth-Riley Construction Company.

(d) Pursuant to its construction contract the Rieth-Riley Construction Company has proceeded with and has completed the construction of the approach piers and abutments and has received full and final payment therefor.

Contract No. 4, which includes the remainder of the steel superstructure of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on December 4, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $260,750.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 18, 1930, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the Globe Construction Company has proceeded with

and has completed the construction of the approach superstructure (including concrete floor) and has received full and final payment therefor.

Contract No. 5, which includes the earthwork and small structures for the earth embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on March 31, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 23, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana) awarded a construction contract to the low bidder, the Scharl Construction Company, Grand Rapids, Michigan, at a contract price of $188,221.47.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way the Director of the Indiana State Highway Commission as of June 19, 1931, executed a construction contract with the aforesaid Scharl Construction Company.

(d) Pursuant to its construction contract the said Scharl Construction Company has proceeded with the construction of the earth embankment approaches, and has completed this work with the exception of some minor items. The remaining work is being rapidly completed.

Contract No. 6, which includes two larger bridges providing openings for flood waters in sloughs across the embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission, and certain conditions relative to rights of way (in both Kentucky and Indiana) awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $97,044.40.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the said Globe Construction Company has proceeded with and completed the construction of these overflow bridges, with the exception of part of the concrete handrails and some minor items. The remaining work is being rapidly completed.

Contract No. 7, which includes one large bridge providing an opening for flood waters in sloughs across the north embankment approach and one small bridge over a stream crossing the north embankment approach.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in Indiana) awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $134,865.66.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way, the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the said Globe Construction Company has proceeded with and has completed the construction of the small bridge and has completed the construction of the large overflow structure with the exception of the concrete handrails and some minor items of work. The remaining work is being rapidly completed.

Contract No. 8, which includes the pavement, shoulders, guard rail and appurtenances thereto, on the earth embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on April 5, 1932, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 14, 1932, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Wm. D. Vogel, Indianapolis, Indiana, at a contract price of $58,739.71.

(c) Having been informed of the approval of the Kentucky Highway Commission on said award the Director of the Indiana State Highway Commission as of May 4, 1932, executed a construction contract with the aforesaid Wm. D. Vogel.

(d) Pursuant to its construction contract the said Wm. D. Vogel has proceeded with and has completed the pavement, shoulders, guard rail, and appurtenances thereto, except for some minor items of work connected with the final cleaning up of the contract, and except for certain short gaps in the pavement adjacent to overflow bridges, which amounts of pavement were removed from this contract because settlement of the fill is expected. The remaining work of cleaning up this contract is being rapidly completed.

Proposed Contract No. 9, which includes the remaining gaps in the pavement, the construction of slope revetments to protect the embankment approaches from erosion, and incidental items.

(a) Studies have been made and correspondence had with the Kentucky Highway Commission preliminary to the preparation of plans and specifications for a contract for this work to be let after the embankment approaches shall have taken their settlement and become sufficiently stable.

General—The Kentucky State Highway Commission states that all right of way required for this project in Kentucky has been acquired by agreement or condemnation. All right of way required for this project in Indiana has been acquired by agreement or condemned.

The main river bridge and sufficient portions of the approaches to connect with existing surfaced highways in

Kentucky and Indiana is opened to and being used by traffic. The remaining portions of the approaches are ready to receive traffic as soon as the last concrete shall have hardened and cured sufficiently.

Dated at Indianapolis, Indiana, September 28, 1932.

Respectfully submitted,

JOHN J. BROWN,
Director, Indiana State Highway Commission.

The above and foregoing report, made by the Indiana State Highway Commission, through its said Director, for and on behalf of the Defendant, State of Indiana, in accordance with clause 5 of the decree of May 19, 1930, of the Supreme Court of the United States in said cause is

Respectfully submitted,

JAMES M. OGDEN,
Attorney General of Indiana.
CONNOR D. ROSS,
Assistant Attorney General.

FILE COPY

MAR 2

CHARLES ELM

IN THE

Supreme Court of the United States

No. [redacted]—Original 87

IN EQUITY

COMMONWEALTH OF KENTUCKY, - - - Complainant,

v.

THE STATE OF INDIANA, AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, LESTER R. McCOOL, ALL CITIZENS OF THE STATE OF INDIANA - - - - - - - - - - - - - - - Defendants.

REPORT No. 6.

BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

STATE OF INDIANA,
PHILIP LUTZ, JR.,
Attorney General of Indiana,
GEORGE W. HUFSMITH,
Assistant Attorney General of Indiana,
JOSEPH W. HUTCHINSON,
Assistant Attorney General of Indiana,
Solicitors for the State of Indiana.

Wm. B. Burford Printing Co., Indianapolis

IN THE

Supreme Court of the United States

No. 16—Original
IN EQUITY

COMMONWEALTH OF KENTUCKY, - - - Complainant,

v.

THE STATE OF INDIANA, AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, LESTER R. McCOOL, ALL CITIZENS OF THE STATE OF INDIANA - - - - - - - - - - - - - - - Defendants.

REPORT No. 6.
BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

To the Honorable Charles Elmore Cropley, Clerk of the Supreme Court of the United States:

Upon the entry of the decree of the Supreme Court on May 19, 1930, the State of Indiana, through and by its State Highway Commission, proceeded at once with the work of completing plans and specifications for said bridge

and with the award of contracts and the work of construction as set out below.

For the preparation of plans and specifications and work of construction, the project has been divided into nine proposed contracts and the work done from May 19, 1930, to March 1, 1933, so divided in this report.

CONTRACT No. 1, which includes the five main river piers, designated as Piers A to E inclusive.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction contract to the low bidder, the Kansas City Bridge Company, Kansas City, Mo., at a contract price at $466,800.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, exe-

cuted a construction contract with the aforesaid Kansas City Bridge Company.

(d) Pursuant to its construction contract the Kansas City Bridge Company has proceeded with and has completed the construction of the five main piers, and has received full and final payment therefor.

CONTRACT No. 2, which includes the long span steel cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky, awarded a construction contract to the low bidder, the American Bridge Company, Pittsburgh, Pa., at a contract price of $675,945.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for

occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid American Bridge Company.

(d) Pursuant to its construction contract, the American Bridge Company has proceeded with and has completed the construction of the long span cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E and has received full and final payment therefor.

CONTRACT No. 3, which includes the remaining piers and abutments of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, Rieth-Riley Construction Company, Goshen, Indiana, at a contract price of $197,500.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Rieth-Riley Construction Company.

(d) Pursuant to its construction contract the Rieth-Riley Construction Company has proceeded with and has completed the construction of the approach piers and abutments and has received full and final payment therefor.

CONTRACT No. 4, which includes the remainder of the steel superstructure of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on December 4, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, the Globe Con-

struction Company, Evansville, Indiana, at a contract price of $260,750.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 18, 1930, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the Globe Construction Company has proceeded with and has completed the construction of the approach superstructure (including concrete floor) and has received full and final payment therefor.

CONTRACT No. 5, which includes the earthwork and small structures for the earth embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on March 31, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 23, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana), awarded a construction contract to the low bidder, the Scharl Construction Company, Grand Rapids, Michigan, at a contract price of $188,221.47.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing

rights of way, the Director of the Indiana State Highway Commission as of June 19, 1931, executed a construction contract with the aforesaid Scharl Construction Company.

(d) Pursuant to its construction contract the said Scharl Construction Company has proceeded with the construction of the earth embankment approaches, and has completed this work and has received full and final payment therefor.

CONTRACT No. 6, which includes two larger bridges providing openings for flood waters in sloughs across the embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $97,044.40.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the said Globe Construction Company has proceeded with and has completed the construction of these overflow bridges and has received full and final payment therefor.

CONTRACT No. 7, which includes one large bridge providing an opening for flood waters in sloughs across the north embankment approach and one small bridge over a stream crossing the north embankment approach.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in Indiana), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $134,865.66.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the said Globe Construction Company has proceeded with and has completed the construction of these structures and has received full and final payment therefor.

CONTRACT No. 8, which includes the pavement, shoulders, guard rail and incidental items, on the earth embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on April 5, 1932, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 14, 1932, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Wm. D. Vogel, Indianapolis, Indiana, at a contract price of $58,739.71.

(c) Having been informed of the approval of the Kentucky State Highway Commission on said award the Director of the Indiana State Highway Commission as of May 4, 1932, executed a construction contract with the aforesaid Wm. D. Vogel.

(d) Pursuant to its construction contract the said Wm. D. Vogel, has proceeded with and has completed the pavement, shoulders, guard rail, and appurtenances thereto (except for certain short gaps in the pavement adjacent to overflow bridges, which amounts of pavement were removed from this contract because settlement of the fill is expected), and has received full and final payment therefor.

PROPOSED CONTRACT No. 9, which includes the remaining gaps in the pavement, the construction of slope revetments to protect the embankment approaches from erosion, and incidental items.

(a) Contract plans, specifications and contract papers for this proposed contract have been completed and transmitted to the Kentucky State Highway Commission for approval.

(b) On February 21, 1933, competitive bids were received by the Indiana State Highway Commission preparatory to the award of a construction contract for this work.

GENERAL—The Kentucky State Highway Commission states that all right of way required for this project in Kentucky has been acquired by agreement or condemnation. All right of way required for this project in Indiana has been acquired by agreement or condemned.

The bridge and approaches are opened to and being used by traffic.

Under the terms of An Act of the General Assembly of Indiana entitled "An Act creating a state highway commission, providing for the appointment of members of the state highway commission, prescribing the powers and duties of the members of the commission, for the establishment of a system of state highways, for the construction, maintenance, repair and control of state highways, for the creation of a state highway fund, providing for cooperation with the federal government in the construction of rural post roads, repealing an Act entitled 'An Act creating a state highway commission providing for the appointment of the members of the state highway commission, for the appointment of a director and of employees of the state highway commission, providing for the division of the work of the commission, for the estab-

lishment of a system of state highways, for the construction, maintenance, repair and control of public highways, for the creation of the state highway fund, providing for the violation of the provisions of said act, providing for cooperation with the federal government in the construction of rural post roads, repealing an act entitled "An Act creating a state highway commission providing for the construction, reconstruction, maintenance, repair and control of public highways, and providing for cooperation with the federal government in the construction of rural post roads" (approved March 7, 1917), and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency,' approved March 10, 1919, and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency," approved February 14, 1933, the act of March 10, 1919, establishing the Indiana State Highway Commission was repealed and all of the offices created by that act were revoked, abolished and declared vacant. Pursuant to said act of February 14, 1933, the Governor of Indiana appointed a new State Highway Commission, consisting of James D. Adams, Chairman, and Evan B. Stotsenburg and John W. Wheeler, members, such appointments being effective as of February 15, 1933.

Said act of February 14, 1933, provides that "All properties, and contractual and equitable rights and obligations, and any and all negotiations in the process of consummation of the state highway commission as created by said act of March 10, 1919, and all acts amendatory thereof and supplemental thereto, are hereby transferred to the state highway commission as herein created," and,

that "Under the authority of the state highway commission and in conformity to its orders, the chairman shall approve all bids, sign all vouchers, issue all orders for supplies and materials, sign all contracts and agreements in the name of the State of Indiana, and shall subscribe to all other matters which may arise in the carrying out of the intent and purpose of this act."

Dated at Indianapolis, Indiana, February 25, 1933.

Respectfully submitted,

JAMES D. ADAMS, Chairman,
Indiana State Highway Commission.

The above and foregoing report, made by the Indiana State Highway Commission, through its said Chairman, for and on behalf of the Defendant, State of Indiana, in accordance with clause 5 of the decree of May 19, 1930, of the Supreme Court of the United States in said cause is

Respectfully submitted,

Attorney General of Indiana,

Assistant Attorney General of Indiana,

Assistant Attorney General of Indiana,

Solicitors for the State of Indiana.

FILE COPY

SEP 1

CHARLES ELMOR

IN THE

Supreme Court of the United States

No. [redacted]—Original
IN EQUITY

87

COMMONWEALTH OF KENTUCKY - - - Complainant,

v.

THE STATE OF INDIANA, AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, LESTER R. McCOOL, ALL CITIZENS OF THE STATE OF INDIANA - - - - - - Defendants.

REPORT No. 7.

BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

STATE OF INDIANA,
PHILIP LUTZ, JR.,
Attorney General of Indiana,

JOSEPH P. McNAMARA,
Deputy Attorney General of Indiana,
Solicitors for the State of Indiana.

Wm. B. Burford Printing Co., Indianapolis

IN THE

Supreme Court of the United States

No. 16—Original
IN EQUITY

COMMONWEALTH OF KENTUCKY - - - - *Complainant,*

v.

THE STATE OF INDIANA AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, LESTER R. MCCOOL, ALL CITIZENS OF THE STATE OF INDIANA - - - *Defendants.*

REPORT No. 7.

BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

To the Honorable Charles Elmore Cropley, Clerk of the Supreme Court of the United States:

Upon the entry of the decree of the Supreme Court on May 19, 1930, the State of Indiana, through and by its State Highway Commission, proceeded at once with the work of completing plans and specifications for said

bridge and with the award of contracts and the work of construction as set out below.

For the preparation of plans and specifications and work of construction, the project has been divided into 9 proposed contracts and the work done from May 19, 1930, to September 1, 1933, so divided in this report.

CONTRACT No. 1, which includes the five main river piers, designated as Piers A to E, inclusive.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction contract to the low bidder, the Kansas City Bridge Company, Kansas City, Mo., at a contract price of $466,800.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December

13, 1930, executed a construction contract with the aforesaid Kansas City Bridge Company.

(d) Pursuant to its construction contract the Kansas City Bridge Company has proceeded with and has completed the construction of the five main piers, and has received full and final payment therefor.

CONTRACT No. 2, which includes the long span steel cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction contract to the low bidder, the American Bridge Company, Pittsburg, Pa., at a contract price of $675,945.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indi-

ana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid American Bridge Company.

(d) Pursuant to its construction contract, the American Bridge Company has proceeded with and has completed the construction of the long span cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E and has received full and final payment therefor.

CONTRACT No. 3, which includes the remaining piers and abutments of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, Rieth-Riley Construction Company, Goshen, Indiana, at a contract price of $197,500.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Rieth-Riley Construction Company.

(d) Pursuant to its construction contract the Rieth-Riley Construction Company has proceeded with and has completed the construction of the approach piers and abutments and has received full and final payment therefor.

CONTRACT No. 4, which includes the remainder of the steel superstructure of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on December 4, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, the Globe

Construction Company, Evansville, Indiana, at a contract price of $260,750.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 18, 1930, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the Globe Construction Company has proceeded with and has completed the construction of the approach superstructure (including concrete floor) and has received full and final payment therefor.

CONTRACT No. 5, which includes the earthwork and small structures for the earth embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on March 31, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 23, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana), awarded a construction contract to the low bidder, the Scharl Construction Company, Grand Rapids, Michigan, at a contract price of $188,221.47.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing

rights of way the Director of the Indiana State Highway Commission as of June 19, 1931, executed a construction contract with the aforesaid Scharl Construction Company.

(d) Pursuant to its construction contract the said Scharl Construction Company has proceeded with the construction of the earth embankment approaches, and has completed this work and has received full and final payment therefor.

CONTRACT No. 6, which includes two larger bridges providing openings for flood waters in sloughs across the embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana, awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $97,044.40.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the said Globe Construction Company has proceeded with and has completed the construction of these overflow bridges and has received full and final payment therefor.

CONTRACT No. 7, which includes one large bridge providing an opening for flood waters in sloughs across the north embankment approach and one small bridge over a stream crossing the north embankment approach.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in Indiana), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $134,865.66.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the said Globe Construction Company has proceeded with and has completed the construction of these structures and has received full and final payment therefor.

CONTRACT No. 8, which includes the pavement, shoulders, guard rail and incidental items, on the earth embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on April 5, 1932, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 14, 1932, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Wm. D. Vogel, Indianapolis, Indiana, at a contract price of $58,-739.71.

(c) Having been informed of the approval of the Kentucky State Highway Commission on said award the Director of the Indiana State Highway Commission as of May 4, 1932, executed a construction contract with the aforesaid Wm. D. Vogel.

(d) Pursuant to its construction contract the said Wm. D. Vogel has proceeded with and has completed the pavement, shoulders, guard rail, and appurtenances thereto (except for certain short gaps in the pavement adjacent to overflow bridges, which amounts of pavement were removed from this contract because settlement of the fill is expected), and has received full and final payment therefor.

CONTRACT No. 9, which includes the remaining gaps in the pavement, the construction of slope revetments to protect the embankment approaches from erosion, and incidental items.

(a) Contract plans, specifications and contract papers have been completed and on February 21, 1933, competitive bids for the construction of this work were received by the State Highway Commission of Indiana.

(b) On February 23, 1933, the State Highway Commission of Indiana, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Hanson Bros., Inc., Evansville, Indiana, at a contract price of $41,290.64.

(c) Having been informed of the approval of the Kentucky State Highway Commission on said award the Chairman of the State Highway Commission of Indiana, on May 4, 1933, executed a construction contract with the aforesaid Hanson Bros., Inc.

(d) Pursuant to its construction contract the said Hanson Bros. has proceeded with and has completed the roadway gap paving contained in this contract work and is now actively engaged in constructing the slope revetment work, having completed approximately 85 per cent of this work.

GENERAL—The Kentucky State Highway Commission states that all right of way required for this project in Kentucky has been acquired by agreement or condemnation. All right of way required for this project in Indiana has been acquired by agreement or condemnation.

The bridge and approaches are open to and being used by traffic.

Under the terms of an act of the General Assembly of

Indiana, entitled "An act creating a state highway commission, providing for the appointment of members of the state highway commission, prescribing the powers and duties of the members of the commission, for the establishment of a system of state highways, for the construction, maintenance, repair and control of state highways, for the creation of a state highway fund, providing for cooperation with the federal government in the construction of rural post roads, repealing an act entitled 'An act creating a state highway commission providing for the appointment of the members of the state highway commission, for the appointment of a director and of employees of the state highway commission, providing for the division of the work of the commission, for the establishment of a system of state highways, for the construction, maintenance, repair and control of public highways, for the creation of the state highway fund, providing for the violation of the provisions of said act, providing for cooperation with the federal government in the construction of rural post roads repealing an act entitled "An act creating a state highway commission providing for the construction, reconstruction, maintenance, repair and control of public highways, and providing for cooperation with the federal government in the construction of rural post roads," (approved March 7, 1917), and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency,' approved March 10, 1919, and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency," approved February 14, 1933, the act of March 10, 1919, establishing the Indiana State Highway Com-

mission was repealed and all of the offices created by that act were revoked, abolished and declared vacant. Pursuant to said act of February 14, 1933, the Governor of Indiana appointed a new State Highway Commission, consisting of James D. Adams, chairman, and Evan B. Stotsenburg and John Ward Wheeler, members, such appointments being effective as of February 15, 1933.

Said act of February 14, 1933, provides that "All properties, and contractual and equitable rights and obligations, and any and all negotiations in the process of consummation of the state highway commission as created by said act of March 10, 1919, and all acts amendatory thereof and supplemental thereto, are hereby transferred to the state highway commission as herein created," and, that "Under the authority of the state highway commission and in conformity to its orders, the chairman shall approve all bids, sign all vouchers, issue all orders for supplies and materials, sign all contracts and agreements in the name of the State of Indiana, and shall subscribe to all other matters which may arise in the carrying out of the intent and purpose of this act."

Dated at Indianapolis, Indiana, August 28, 1933.

Respectfully submitted,

JAMES D. ADAMS, Chairman,
Indiana State Highway Commission.

The above and foregoing report, made by the Indiana State Highway Commission, through its said Chairman, for and on behalf of the defendant, State of Indiana, in accordance with clause 5 of the decree of May 19, 1930,

of the Supreme Court of the United States in said cause is

Respectfully submitted,

PHILIP LUTZ, JR.,
Attorney General of Indiana,

JOSEPH P. McNAMARA,
Deputy Attorney General of Indiana,
Solicitors for the State of Indiana.

FILE COPY

FEB 28 19
CHARLES ELMORE
CL

IN THE

Supreme Court of the United States

No. [redacted] Original 587

IN EQUITY

COMMONWEALTH OF KENTUCKY - - Complainant,

v.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State
of Indiana - - - - - - - - - Defendants.

REPORT No. 8

BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

STATE OF INDIANA,
PHILIP LUTZ, JR.,
Attorney General of Indiana,
JOSEPH P. McNAMARA,
Deputy Attorney General of Indiana,
Solicitors for the State of Indiana.

Wm. B. Burford Printing Co., Indianapolis

IN THE

Supreme Court of the United States

No. 16—Original
IN EQUITY

COMMONWEALTH OF KENTUCKY - - Complainant,

v.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of Indiana - - - - - - - - - Defendants.

REPORT No. 8
BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

To the Honorable Charles Elmore Cropley, Clerk of the Supreme Court of the United States:

Upon the entry of the decree of the Supreme Court of May 19, 1930, the State of Indiana, through and by its State Highway Commission, proceeded at once with the work of completing plans and specifications for said bridge

and with the award of contracts and the work of construction as set out below.

For the preparation of plans and specifications and work of construction, the project has been divided into 10 proposed contracts and the work done from May 19, 1930, to March 1, 1934, so divided in this report.

CONTRACT No. 1, which includes the five main river piers, designated as Piers A to E, inclusive.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date, September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, the Kansas City Bridge Company, Kansas City, Mo., at a contract price of $466,800.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Kansas City Bridge Company.

(d) Pursuant to its construction contract the Kansas City Bridge Company has proceeded with and has completed the construction of five main piers, and has received full and final payment therefor.

CONTRACT No. 2, which includes the long span steel cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date, September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, the American Bridge Company, Pittsburgh, Pa., at a contract price of $675,945.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid American Bridge Company.

(d) Pursuant to its construction contract, the American Bridge Company has proceeded with and has completed the construction of the long span cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E and has received full and final payment therefor.

CONTRACT No. 3, which includes the remaining piers and abutments of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date, September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, Rieth-Riley Construction Company, Goshen, Indiana, at a contract price of $197,500.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Rieth-Riley Construction Company.

(d) Pursuant to its construction contract the Rieth-Riley Construction Company has proceeded with and has completed the construction of the approach piers and abutments and has received full and final payment therefor.

CONTRACT No. 4, which includes the remainder of the steel superstructure of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date, September 12, 1928, the Indiana State Highway Commission, on December 4, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $260,750.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 18, 1930, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the Globe Construction Company has proceeded with and has completed the construction of the approach superstructure (including concrete floor) and has received full and final payment therefor.

CONTRACT No. 5, which includes the earthwork and small structures for the earth embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on March 31, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 23, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana), awarded a construction contract to the low bidder, the Scharl Construction Company, Grand Rapids, Michigan, at a contract price of $188,221.47.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way the Director of the Indiana State Highway Commission as of June 19, 1931, executed a construction contract with the aforesaid Scharl Construction Company.

(d) Pursuant to its construction contract the said Scharl Construction Company has proceeded with the construction of the earth embankment approaches, and has completed this work and has received full and final payment therefor.

CONTRACT No. 6, which includes two larger bridges providing openings for flood waters in sloughs across the embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $97,044.40.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the said Globe Construction Company has proceeded with and has completed the construction of these overflow bridges and has received full and final payment therefor.

CONTRACT No. 7, which includes one large bridge providing an opening for flood waters in sloughs across the north embankment approach and one small bridge over a stream crossing the north embankment approach.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky

Highway Commission and certain conditions relative to rights of way (in Indiana), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $134,865.66.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the said Globe Construction Company has proceeded with and has completed the construction of these structures and has received full and final payment therefor.

CONTRACT No. 8, which includes the pavement, shoulders, guard rail and incidental items, on the earth embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on April 5, 1932, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 14, 1932, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Wm. D. Vogel, Indianapolis, Indiana, at a contract price of $58,739.71.

(c) Having been informed of the approval of the Kentucky State Highway Commission on said award the Director of the Indiana State Highway Commission as of May 4, 1932, executed a construction contract with the aforesaid Wm. D. Vogel.

(d) Pursuant to his construction contract the said Wm. D. Vogel has proceeded with and has completed the pavement, shoulders, guard rail, and appurtenances thereto (except for certain short gaps in the pavement adjacent to overflow bridges, which amounts of pavement were removed from this contract because settlement of the fill is expected), and has received full and final payment therefor.

CONTRACT No. 9, which includes the remaining gaps in the pavement, the construction of slope revetments to protect the embankment approaches from erosion, and incidental items.

(a) Contract plans, specifications and contract papers have been completed and on February 21, 1933, competitive bids for the construction of this work were received by the State Highway Commission of Indiana.

(b) On February 23, 1933, the State Highway Commission of Indiana, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Hanson Bros., Inc., Evansville, Indiana, at a contract price of $41,290.64.

(c) Having been informed of the approval of the Kentucky State Highway Commission on said award the Chairman of the State Highway Commission of Indiana, on May 4, 1933, executed a construction contract with the aforesaid Hanson Bros., Inc.

(d) Pursuant to its construction contract the said Hanson Bros. has proceeded with and has completed the work contained in this contract and has received full and final payment therefor.

CONTRACT No. 10, which includes bituminous paving of shoulders, placing of riprap, placing of topsoil and seeding of shoulders and slopes.

(a) Contract plans, specifications and contract papers have been completed and on October 10, 1933, competitive bids for this work were received by the State Highway Commission of Indiana.

(b) On October 13, 1933, the State Highway Commission of Indiana, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Wm. D. Vogel, Indianapolis, Indiana, at a contract price of $19,900.41.

(c) Having been informed of the approval of the Kentucky Highway Commission on said award, the Chairman of the State Highway Commission of Indiana as of November 1, 1933, executed a construction contract with the aforesaid Wm. D. Vogel.

(d) Actual construction work under said contract has been postponed until suitable weather in the spring.

GENERAL—The Kentucky State Highway Commission states that all right of way required for this project in Kentucky has been acquired by agreement or condemnation. All right of way required for this project in Indiana has been acquired by agreement or condemnation.

The bridge and approaches are open to and being used by traffic.

Under the terms of an act of the General Assembly of Indiana, entitled "An act creating a state highway commission, providing for the appointment of members of the state highway commission, prescribing the powers and duties of the members of the commission, for the establishment of a system of state highways, for the con-

struction, maintenance, repair and control of state highways, for the creation of a state highway fund, providing for cooperation with the federal government in the construction of rural post roads, repealing an act entitled "An act creating a state highway commission providing for the appointment of the members of the state highway commission, for the appointment of a director and of employees of the state highway commission, providing for the division of the work of the commission, for the establishment of a system of state highways, for the construction, maintenance, repair and control of public highways, for the creation of the state highway fund, providing for the violation of the provisions of said act, providing for cooperation with the federal government in the construction of rural post roads repealing an act entitled "An act creating a state highway commission providing for the construction, reconstruction, maintenance, repair and control of public highways, and providing for cooperation with the federal government in the constructin of rural post roads," (approved March 7, 1917), and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency,' approved March 10, 1919, and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency," approved February 14, 1933, the act of March 10, 1919, establishing the Indiana State Highway Commission was repealed and all of the offices created by that act were revoked, abolished and declared vacant. Pursuant to said act of February 14, 1933, the Governor of Indiana appointed a new State Highway Commission, consisting of James D. Adams, chairman, and Evan B. Stotsenburg and John Ward Wheeler, members, such appointments being effective as of February 15, 1933.

Said act of February 14, 1933, provides that "All properties, and contractual and equitable rights and obliga-

tions, and any and all negotiations in the process of consummation of the state highway commission as created by said act of March 10, 1919, and all acts amendatory thereof and supplemental thereto, are hereby transferred to the state highway commission as herein created," and, that "Under the authority of the state highway commission and in conformity to its orders, the chairman shall approve all bids, sign all vouchers, issue all orders for supplies and materials, sign all contracts and agreements in the name of the State of Indiana, and shall subscribe to all other matters which may arise in the carrying out of the intent and purpose of this act."

Dated at Indianapolis, Indiana, February 25, 1934.

Respectfully submitted,

JAMES D. ADAMS,
Chairman, State Highway Commission
of Indiana.

The above and foregoing report, made by the State Highway Commission of Indiana, through its said Chairman, for and on behalf of the defendant, State of Indiana, in accordance with clause 5 of the decree of May 19, 1930, of the Supreme Court of the United States in said cause is

Respectfully submitted,

STATE OF INDIANA,
PHILIP LUTZ, JR.,
Attorney General of Indiana,
JOSEPH P. McNAMARA,
Deputy Attorney General of Indiana,
Solicitors for the State of Indiana.

FILE COPY

FIL
AUG 30
CHARLES ELMOR

IN THE

Supreme Court of the United States

No. 8 Original 887
IN EQUITY

COMMONWEALTH OF KENTUCKY - - - Complainant,

v.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State
of Indiana - - - - - - - - - - - - - Defendants.

REPORT No. 9

BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

STATE OF INDIANA,
PHILIP LUTZ, JR.,
Attorney General of Indiana,
JOSEPH P. McNAMARA,
Deputy Attorney General of Indiana,
Solicitors for the State of Indiana.

Wm. B. Burford Printing Co., Indianapolis

IN THE

Supreme Court of the United States

No. 16—Original
IN EQUITY

COMMONWEALTH OF KENTUCKY - - - Complainant,

v.

THE STATE OF INDIANA, and
JAMES DUANE DUNCAN,
CLAUDE F. JOHNSON,
WALTER L. BRANDT,
ROBERT N. LOSEY,
FRANK D. HATFIELD,
TODD STOOPS,
JOHN F. CARSON,
ROBERT E. ROGERS,
LESTER R. McCOOL, All Citizens of the State of Indiana - - - - - - - - - - - - - - Defendants.

REPORT No. 9
BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

To the Honorable Charles Elmore Cropley, Clerk of the Supreme Court of the United States:

Upon the entry of the decree of the Supreme Court of May 19, 1930, the State of Indiana, through and by its State Highway Commission, proceeded at once with the work of completing plans and specifications for said

bridge and with the award of contracts and the work of construction as set out below.

For the preparation of plans and specifications and work of construction, the project has been divided into 10 contracts and the work done from May 19, 1930, to September 1, 1934, so divided in this report.

CONTRACT No. 1, which includes the five main river piers, designated as Piers A to E, inclusive.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, the Kansas City Bridge Company, Kansas City, Mo., at a contract price of $466,800.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Kansas City Bridge Company.

(d) Pursuant to its construction contract the Kansas City Bridge Company has proceeded with and has completed the construction of five main piers, and has received full and final payment therefor.

CONTRACT No. 2, which includes the long span steel cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction contract to the low bidder, the American Bridge Company, Pittsburgh, Pa., at a contract price of $675,945.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid American Bridge Company.

(d) Pursuant to its construction contract, the American Bridge Company has proceeded with and has completed the construction of the long span cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E and has received full and final payment therefor.

CONTRACT No. 3, which includes the remaining piers and abutments of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, Rieth-Riley Construction Company, Goshen, Indiana, at a contract price of $197,500.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13,

1930, executed a construction contract with the aforesaid Rieth-Riley Construction Company.

(d) Pursuant to its construction contract the Rieth-Riley Construction Company has proceeded with and has completed the construction of the approach piers and abutments and has received full and final payment therefore.

CONTRACT No. 4, which includes the remainder of the steel superstructure of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Comsion.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on December 4, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $260,750.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 18,

1930, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the Globe Construction Company has proceeded with and has completed the construction of the approach superstructure (including concrete floor) and has received full and final payment therefor.

CONTRACT No. 5, which includes the earthwork and small structures for the earth embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on March 31, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 23, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana), awarded a construction contract to the low bidder, the Scharl Construction Company, Grand Rapids, Michigan, at a contract price of $188,221.47.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way the Director of the Indiana State Highway Commission as of June 19, 1931, executed a construction contract with the aforesaid Scharl Construction Company.

(d) Pursuant to its construction contract the said Scharl Construction Company has proceeded with the construction of the earth embankment ap-

proaches, and has completed this work and has received full and final payment therefor.

CONTRACT No. 6, which includes two larger bridges providing openings for flood waters in sloughs across the embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $97,044.40.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the said Globe Construction Company has proceeded with and has completed the construction of these overflow bridges and has received full and final payment therefor.

CONTRACT No. 7, which includes one large bridge providing an opening for flood waters in sloughs across the north embankment approach and one small bridge

over a stream crossing the north embankment approach.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in Indiana), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $134,865.66.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the said Globe Construction Company has proceeded with and has completed the construction of these structures and has received full and final payment therefor.

CONTRACT No. 8, which includes the pavement, shoulders, guard rail and incidental items, on the earth embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on April 5, 1932, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 14, 1932, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Wm. D. Vogel, Indianapolis, Indiana, at a contract price of $58,-739.71.

(c) Having been informed of the approval of the Kentucky State Highway Commission on said award the Director of the Indiana State Highway Commission as of May 4, 1932, executed a construction contract with the aforesaid Wm. D. Vogel.

(d) Pursuant to his construction contract the said Wm. D. Vogel has proceeded with and has completed the pavement, shoulders, guard rail, and appurtenances thereto (except for certain short gaps in the pavement adjacent to overflow bridges, which amounts of pavement were removed from this contract because settlement of the fill was expected), and has received full and final payment therefor.

CONTRACT No. 9, which includes the remaining gaps in the pavement, the construction of slope revetments to protect the embankment approaches from erosion, and incidental items.

(a) Contract plans, specifications and contract papers have been completed and on February 21, 1933, competitive bids for the construction of this work were received by the State Highway Commission of Indiana.

(b) On February 23, 1933, the State Highway Commission of Indiana, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Hanson Bros.,

Inc., Evansville, Indiana, at a contract price of $41,290.64.

(c) Having been informed of the approval of the Kentucky State Highway Commission on said award the Chairman of the State Highway Commission of Indiana, on May 4, 1933, executed a construction contract with the aforesaid Hanson Bros., Inc.

(d) Pursuant to its construction contract the said Hanson Bros. has proceeded with and has completed the work contained in this contract and has received full and final payment therefor.

CONTRACT No. 10, which includes bituminous paving of shoulders, placing of riprap, placing of topsoil and seeding of shoulders and slopes.

(a) Contract plans, specifications and contract papers have been completed and on October 10, 1933, competitive bids for this work were received by the State Highway Commission of Indiana.

(b) On October 13, 1933, the State Highway Commission of Indiana, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Wm. D. Vogel, Indianapolis, Indiana, at a contract price of $19,900.41.

(c) Having been informed of the approval of the Kentucky Highway Commission on said award, the Chairman of the State Highway Commission of Indiana as of November 1, 1933, executed a construction contract with the aforesaid Wm. D. Vogel.

(d) Pursuant to his construction contract the said Wm. D. Vogel has proceeded with and has substantially

completed the work provided in this contract and is proceeding with the completion of the work ready for final acceptance and payment.

GENERAL—The Kentucky State Highway Commission states that all right of way required for this project in Kentucky has been acquired by agreement or condemnation. All right of way required for this project in Indiana has been acquired by agreement or condemnation. The bridge and approaches are open to and being used by traffic.

Under the terms of an act of the General Assembly of Indiana, entitled "An act creating a state highway commission, providing for the appointment of members of the state highway commission, prescribing the powers and duties of the members of the commission, for the establishment of a system of state highways, for the construction, maintenance, repair and control of state highways, for the creation of a state highway fund, providing for cooperation with the federal government in the construction of rural post roads, repealing an act entitled 'An act creating a state highway commission providing for the appointment of the members of the state highway commission, for the appointment of a director and of employees of the state highway commission, providing for the division of the work of the commission, for the establishment of a system of state highways, for the construction, maintenance, repair and control of public highways, for the creation of the state highway fund, providing for the violation of the provisions of said act, providing for cooperation with the federal government in the construction of rural post roads repealing an act entitled "An act creating a state highway commission, providing for the construction, reconstruction, maintenance, repair and control of public high-

ways, and providing for cooperation with the federal government in the construction of rural post roads," (approved March 7, 1917), and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency,' approved March 10, 1919, and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency," approved February 14, 1933, the act of March 10, 1919, establishing the Indiana State Highway Commission was repealed and all of the offices created by that act were revoked, abolished and declared vacant. Pursuant to said act of February 14, 1933, the Governor of Indiana appointed a new State Highway Commission, consisting of James D. Adams, chairman, and Evan B. Stotsenburg and John Ward Wheeler, members, such appointments being effective as of February 15, 1933.

Said act of February 14, 1933, provides that "All properties, and contractual and equitable rights and obligations, and any and all negotiations in the process of consummation of the state highway commission as created by said act of March 10, 1919, and all acts amendatory thereof and supplemental thereto, are hereby transferred to the state highway commission as herein created," and, that "Under the authority of the state highway commission and in conformity to its orders, the chairman shall approve all bids, sign all vouchers, issue all orders for supplies and materials, sign all contracts and agreements in the name of the State of Indiana, and shall subscribe to all other matters which may arise in the carrying out of the intent and purpose of this act."

Dated at Indianapolis, Indiana, August 28, 1934.

Respectfully submitted,

JAMES D. ADAMS, Chairman,
State Highway Commission of Indiana.

The above and foregoing report, made by the State Highway Commission of Indiana, through its said Chairman, for and on behalf of the defendant, State of Indiana, in accordance with clause 5 of the decree of May 19, 1930, of the Supreme Court of the United States in said cause is

Respectfully submitted,

STATE OF INDIANA,

Philip Lutz Jr.

Attorney General of Indiana,

Joseph P. McNamara

Deputy Attorney General of Indiana,
Solicitors for the State of Indiana.

FILE COPY

FILED

MAR 1 1935

IN THE

Supreme Court of the United States

No. 8 Original 7

IN EQUITY

COMMONWEALTH OF KENTUCKY, - - - Complainant,

v.

THE STATE OF INDIANA, AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, LESTER R. McCOOL, ALL CITIZENS OF THE STATE OF INDIANA, - - - - - - - - - - - - - - - Defendants.

REPORT No. 10
BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

STATE OF INDIANA,
PHILIP LUTZ, JR.,
Attorney General of Indiana,
URBAN C. STOVER,
JOSEPH P. McNAMARA,
Deputy Attorney Generals of Indiana,
Solicitors for the State of Indiana.

Wm. B. Burford Printing Co., Indianapolis

IN THE

Supreme Court of the United States

No. 16—Original
IN EQUITY

COMMONWEALTH OF KENTUCKY, - - - Complainant,

v.

THE STATE OF INDIANA, AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, LESTER R. McCOOL, ALL CITIZENS OF THE STATE OF INDIANA, - - - - - - - - - - - - - - - Defendants.

REPORT No. 10
BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

To the Honorable Charles Elmore Cropley, Clerk of the Supreme Court of the United States:

Upon the entry of the decree of the Supreme Court of May 19, 1930, the State of Indiana, through and by its State Highway Commission, proceeded at once with the work of completing plans and specifications for said bridge

and with the award of contracts and the work of construction as set out below.

For the preparation of plans and specifications and work of construction, the project has been divided into ten contracts and the work done from May 19, 1930, to March 1, 1935, so divided in this report.

CONTRACT No. 1, which includes the five main river piers, designated as Piers A to E, inclusive.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky, awarded a construction contract to the low bidder, the Kansas City Bridge Company, Kansas City, Mo., at a contract price of $466,800.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State

Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Kansas City Bridge Company.

(d) Pursuant to its construction contract, the Kansas City Bridge Company has proceeded with and has completed the construction of five main piers, and has received full and final payment therefor.

CONTRACT No. 2, which includes the long span steel cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction contract to the low bidder, the American Bridge Company, Pittsburgh, Pa., at a contract price of $675,945.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made avail-

able for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid American Bridge Company.

(d) Pursuant to its construction contract, the American Bridge Company has proceeded with and has completed the construction of the long span cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E and has received full and final payment therefor.

CONTRACT No. 3, which includes the remaining piers and abutments of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, Rieth-Riley

Construction Company, Goshen, Indiana, at a contract price of $197,500.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Rieth-Riley Construction Company.

(d) Pursuant to its construction contract the Rieth-Riley Construction Company has proceeded with and has completed the construction of the approach piers and abutments and has received full and final payment therefor.

CONTRACT No. 4, which includes the remainder of the steel superstructure of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on December 4, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of nec-

essary right of way in Kentucky), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $260,750.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 18, 1930, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the Globe Construction Company has proceeded with and has completed the construction of the approach superstructure (including concrete floor) and has received full and final payment therefor.

CONTRACT No. 5, which includes the earthwork and small structures for the earth embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on March 31, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 23, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana), awarded a construction contract to the low bidder, the Scharl Construction Company, Grand Rapids, Michigan, at a contract price of $188,221.47.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way, the Director of the Indiana State Highway Commission as of June 19, 1931, executed a construction contract with the aforesaid Scharl Construction Company.

(d) Pursuant to its construction contract, the said Scharl Construction Company has proceeded with the construction of the earth embankment approaches, and has completed this work and has received full and final payment therefor.

CONTRACT No. 6, which includes two larger bridges providing openings for flood waters in sloughs across the embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $97,044.40.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of

way, the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract, the said Globe Construction Company has proceeded with and has completed the construction of these overflow bridges and has received full and final payment therefor.

CONTRACT No. 7, which includes one large bridge providing an opening for floodwaters in sloughs across the north embankment approach and one small bridge over a stream crossing the north embankment approach.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in Indiana), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $134,865.66.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way, the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract, the said Globe Construction Company has proceeded with and has completed the construction of these structures and has received full and final payment therefor.

CONTRACT No. 8, which includes the pavement, shoulders, guard rail and incidental items, on the earth embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on April 5, 1932, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 14, 1932, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Wm. D. Vogel, Indianapolis, Indiana, at a contract price of $58,739.71.

(c) Having been informed of the approval of the Kentucky State Highway Commission on said award, the Director of the Indiana State Highway Commission as of May 4, 1932, executed a construction contract with the aforesaid Wm. D. Vogel.

(d) Pursuant to his construction contract, the said Wm. D. Vogel has proceeded with and has completed the pavement, shoulders, guard rail, and appurtenances thereto (except for certain short gaps in the pavement adjacent to overflow bridges, which amounts of pavement were removed from this contract because settlement of the fill was expected), and has received full and final payment therefor.

CONTRACT No. 9, which includes the remaining gaps in the pavement, the construction of slope revetments to protect the embankment approaches from erosion, and incidental items.

(a) Contract plans, specifications and contract papers have been completed and on February 21, 1933, competitive bids for the construction of this work were received by the State Highway Commission of Indiana.

(b) On February 23, 1933, the State Highway Commission of Indiana, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Hanson Bros., Inc., Evansville, Indiana, at a contract price of $41,290.64.

(c) Having been informed of the approval of the Kentucky State Highway Commission on said award, the Chairman of the State Highway Commission of Indiana, on May 4, 1933, executed a construction contract with the aforesaid Hanson Bros., Inc.

(d) Pursuant to its construction contract, the said Hanson Bros. have proceeded with and have completed the work contained in this contract and have received full and final payment therefor.

CONTRACT No. 10, which includes bituminous paving of shoulders, placing of riprap, placing of topsoil and seeding of shoulders and slopes.

(a) Contract plans, specifications and contract papers have been completed and on October 10, 1933, com-

petitive bids for this work were received by the State Highway Commission of Indiana.

(b) On October 13, 1933, the State Highway Commission of Indiana, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Wm. D. Vogel, Indianapolis, Indiana, at a contract price of $19,900.41.

(c) Having been informed of the approval of the Kentucky Highway Commission on said award, the Chairman of the State Highway Commission of Indiana as of November 1, 1933, executed a construction contract with the aforesaid Wm. D. Vogel.

(d) Pursuant to his construction contract, the said Wm. D. Vogel has proceeded with and has completed the work provided in this contract and has received full final payment therefor.

GENERAL—The Kentucky State Highway Commission states that all rights of way required for this project in Kentucky have been acquired by agreement or condemnation. All rights of way required for this project in Indiana have been acquired by agreement or condemnation.

The bridge and approaches are open to and being used by traffic.

Under the terms of an act of the General Assembly of Indiana, entitled "An Act creating a state highway commission, providing for the appointment of members of the state highway commission, prescribing the powers and

duties of the members of the commission, for the establishment of a system of state highways, for the construction, maintenance, repair and control of state highways, for the creation of a state highway fund, providing for cooperation with the federal government in the construction of rural post roads, repealing an act entitled 'An Act creating a state highway commission providing for the appointment of the members of the state highway commission, for the appointment of a director and of employees of the state highway commission, providing for the division of the work of the commission, for the establishment of a system of state highways, for the construction, maintenance, repair and control of public highways, for the creation of the state highway fund, providing for the violation of the provisions of said act, providing for cooperation with the federal government in the construction of rural post roads, repealing an act entitled "An Act creating a state highway commission providing for the construction, reconstruction, maintenance, repair and control of public highways, and providing for cooperation with the federal government in the construction of rural post roads," (approved March 7, 1917), and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency,' approved March 10, 1919, and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency," approved February 14, 1933, the act of March 10, 1919, establishing the Indiana State Highway Commission was repealed and all of the offices created by that act were revoked, abolished and declared vacant. Pursuant to said act of February 14, 1933, the Governor of Indiana appointed a new State

Highway Commission, consisting of James D. Adams, chairman, and Evan B. Stotsenburg and John Ward Wheeler, members, such appointments being effective as of February 15, 1933.

Said act of February 14, 1933, provides that "All properties, and contractual and equitable rights and obligations, and any and all negotiations in the process of consummation of the state highway commission as created by said act of March 10, 1919, and all acts amendatory thereof and supplemental thereto, are hereby transferred to the state highway commission as herein created," and, that "Under the authority of the state highway commission and in conformity to its orders, the chairman shall approve all bids, sign all vouchers, issue all orders for supplies and materials, sign all contracts and agreements in the name of the State of Indiana, and shall subscribe to all other matters which may arise in the carrying out of the intent and purpose of this act."

Dated at Indianapolis, Indiana, February 26, 1935.

Respectfully submitted,

JAMES D. ADAMS, Chairman,
State Highway Commission of Indiana.

The above and foregoing report, made by the State Highway Commission of Indiana, through its said Chairman, for and on behalf of the defendant, State of Indiana, in accordance with clause 5 of the decree of May 19, 1930, of the Supreme Court of the United States in said cause is

Respectfully submitted,

Philip Lutz, Jr.
Attorney General of Indiana,

Joseph P. McNamara
Urban C. Stover
Deputy Attorney Generals of Indiana,

Solicitors for the State of Indiana.



FILE COPY

FILED
SEP 5 19
CHARLES ELMORE CR
CLE

IN THE

Supreme Court of the United States

87

No. ~~16~~—Original
IN EQUITY

COMMONWEALTH OF KENTUCKY, - - - Complainant,

v.

THE STATE OF INDIANA, AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, LESTER R. McCOOL, ALL CITIZENS OF THE STATE OF INDIANA, - - - - - - - - - - - - - - - Defendants.

REPORT No. 11
BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

STATE OF INDIANA,
PHILIP LUTZ, JR.,
Attorney General of Indiana,
URBAN C. STOVER,
JOSEPH P. McNAMARA,
Deputy Attorney Generals of Indiana,
Solicitors for the State of Indiana.

Wm. B. Burford Printing Co., Indianapolis

IN THE

Supreme Court of the United States

No. 16—Original
IN EQUITY

COMMONWEALTH OF KENTUCKY, - - - Complainant,

v.

THE STATE OF INDIANA, AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, LESTER R. McCOOL, ALL CITIZENS OF THE STATE OF INDIANA, - - - - - - - - - - - - - - - Defendants.

REPORT No. 11
BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930.

To the Honorable Charles Elmore Cropley, Clerk of the Supreme Court of the United States:

Upon the entry of the decree of the Supreme Court of May 19, 1930, the State of Indiana, through and by its State Highway Commission, proceeded at once with the work of completing plans and specifications for said bridge and with the

award of contracts and the work of construction as set out below.

For the preparation of plans and specifications and work of construction, the project has been divided into ten contracts and the work done from May 19, 1930, to September 1, 1935, so divided in this report.

CONTRACT No. 1, which includes the five main river piers, designated as Piers A to E, inclusive.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky, awarded a construction contract to the low bidder, the Kansas City Bridge Company, Kansas City, Mo., at a contract price of $466,800.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway

Commission as of December 13, 1930, executed a construction contract with the aforesaid Kansas City Bridge Company.

(d) Pursuant to its construction contract, the Kansas City Bridge Company has proceeded with and has completed the construction of five main piers, and has received full and final payment therefor.

CONTRACT No. 2, which includes the long span steel cantilever superstructure(including concrete floor and navigation lights) of four spans from Pier A to Pier E.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction contract to the low bidder, the American Bridge Company, Pittsburgh, Pa., at a contract price of $675,945.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for

occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid American Bridge Company.

(d) Pursuant to its construction contract, the American Bridge Company has proceeded with and has completed the construction of the long span cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E and has received full and final payment therefor.

CONTRACT No. 3, which includes the remaining piers and abutments of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Comable sufficient funds to pay its part of the cost of said monwealth of Kentucky had made permanently availbridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the

low bidder, Rieth-Riley Construction Company, Goshen, Indiana, at a contract price of $197,500.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Rieth-Riley Construction Company.

(d) Pursuant to its construction contract the Rieth-Riley Construction Company has proceeded with and has completed the construction of the approach piers and abutments and has received full and final payment therefor.

CONTRACT No. 4, which includes the remainder of the steel superstructure of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on December 4, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing

by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $260,750.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 18, 1930, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the Globe Construction Company has proceeded with and has completed the construction of the approach superstructure (including concrete floor) and has received full and final payment therefor.

CONTRACT No. 5, which includes the earthwork and small structures for the earth and embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on March 31, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 23, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana), awarded a construction contract to the low bidder, the Scharl Construction Company, Grand Rapids, Michigan, at a contract price of $188,221.47.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way, the Director of the Indiana State Highway Commission as of June 19, 1931, executed a construction contract with the aforesaid Scharl Construction Company.

(d) Pursuant to its construction contract, the said Scharl Construction Company has proceeded with the construction of the earth embankment approaches, and has completed this work and has received full and final payment therefor.

CONTRACT No. 6, which includes two larger bridges providing openings for flood waters in sloughs across the embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $97,044.40.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of

way, the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract, the said Globe Construction Company has proceeded with and has completed the construction of these overflow bridges and has received full and final payment therefor.

CONTRACT No. 7, which includes one large bridge providing an opening for floodwaters in sloughs across the north embankment approach and one small bridge over a stream crossing the north embankment approach.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in Indiana), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $134,865.66.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way, the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract, the said Globe Construction Company has proceeded with and has completed the construction of these structures and has received full and final payment therefor.

CONTRACT No. 8, which includes the pavement, shoulders, guard rail and incidental items, on the earth embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on April 5, 1932, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 14, 1932, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Wm. D. Vogel, Indianapolis, Indiana, at a contract price of $58,739.71.

(c) Having been informed of the approval of the Kentucky State Highway Commission on said award, the Director of the Indiana State Highway Commission as of May 4, 1932, executed a construction contract with the aforesaid Wm. D. Vogel.

(d) Pursuant to his construction contract, the said Wm. D. Vogel has proceeded with and has completed the pavement, shoulders, guard rail, and appurtenances thereto (except for certain short gaps in the pavement adjacent to overflow bridges, which amounts of pavement were removed from this contract because settlement of the fill was expected), and has received full and final payment therefor.

CONTRACT No. 9, which includes the remaining gaps in the pavement, the construction of slope revetments to protect the embankment approaches from erosion, and incidental items.

(a) Contract plans, specifications and contract papers have been completed and on February 21, 1933, competitive bids for the construction of this work were received by the State Highway Commission of Indiana.

(b) On February 23, 1933, the State Highway Commission of Indiana, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Hanson Bros., Inc., Evansville, Indiana, at a contract price of $41,290.64.

(c) Having been informed of the approval of the Kentucky State Highway Commission on said award, the Chairman of the State Highway Commission of Indiana, on May 4, 1933, executed a construction contract with the aforesaid Hanson Bros., Inc.

(d) Pursuant to its construction contract, the said Hanson Bros. have proceeded with and have completed the work contained in this contract and have received full and final payment therefor.

CONTRACT No. 10, which includes bituminous paving of shoulders, placing of riprap, placing of topsoil and seeding of shoulders and slopes.

(a) Contract plans, specifications and contract papers have been completed and on October 10, 1933, competitive

bids for this work were received by the State Highway Commission of Indiana.

(b) On October 13, 1933, the State Highway Commission of Indiana, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Wm. D. Vogel, Indianapolis, Indiana, at a contract price of $19,900.41.

(c) Having been informed of the approval of the Kentucky Highway Commission on said award, the Chairman of the State Highway Commission of Indiana as of November 1, 1933, executed a construction contract with the aforesaid Wm. D. Vogel.

(d) Pursuant to his construction contract, the said Wm. D. Vogel has proceeded with and has completed the work provided in this contract and has received full and final payment therefor.

GENERAL—The Kentucky State Highway Commission states that all rights of way required for this project in Kentucky have been acquired by agreement or condemnation. All rights of way required for this project in Indiana have been acquired by agreement or condemnation.

The bridge and approaches are open to and being used by traffic.

Under the terms of an act of the General Assembly of Indiana, entitled "An Act creating a state highway commission, providing for the appointment of members of the state highway commission, prescribing the powers and duties of the members of the

commission, for the establishment of a system of state highways, for the construction, maintenance, repair and control of state highways, for the creation of a state highway fund, providing for cooperation with the federal government in the construction of rural post roads, repealing an act entitled 'An Act creating a state highway commission providing for the appointment of the members of the state highway commission, for the appointment of a director and of employees of the state highway commission, providing for the division of the work of the commission, for the establishment of a system of state highways, for the construction, maintenance, repair and control of public highways, for the creation of the state highway fund, providing for the violation of the provisions of said act, providing for cooperation with the federal government in the construction of rural post roads, repealing an act entitled "An Act creating a state highway commission providing for the construction, reconstruction, maintenance, repair and control of public highways, and providing for cooperation with the federal government in the construction of rural post roads," (approved March 7, 1917), and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency,' approved March 10, 1919, and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency,' approved March 10, 1919, and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency," approved February 14, 1933, the act of March 10, 1919, establishing the Indiana State Highway Commission was repealed and all of the offices created by that act were revoked, abolished and declared vacant. Pursuant to said act of February 14, 1933, the Governor of Indiana appointed a new State Highway Commission, consisting of James D. Adams, chairman, and Evan B. Stotsenburg and John Ward Wheeler, members, such appointments being effective as of February 15, 1933.

Said act of February 14, 1933, provides that "All properties, and contractual and equitable rights and obligations, and any and all negotiations in the process of consummation of the state highway commission as created by said act of March 10, 1919, and all acts amendatory thereof and supplemental thereto, are hereby transferred to the state highway commission as herein created," and, that "Under the authority of the state highway commission and in conformity to its orders, the chairman shall approve all bids, sign all vouchers, issue all orders for supplies and materials, sign all contracts and agreements in the name of the State of Indiana, and shall subscribe to all other matters which may arise in the carrying out of the intent and purpose of this act."

Dated at Indianapolis, Indiana, August 29, 1935.

Respectfully submitted,

JAMES D. ADAMS, Chairman,
State Highway Commission of Indiana.

The above and foregoing report, made by the State Highway Commission of Indiana, through its said Chairman, for and on behalf of the defendant, State of Indiana, in accordance with clause 5 of the decree of May 19, 1930, of the Supreme Court of the United States in said cause is

Respectfully submitted,

Philip Lutz

Attorney General of Indiana,

Urban C Stout

Joseph McNamara

Deputy Attorney Generals of Indiana,

Solicitors for the State of Indiana.

FILE COPY

IN THE

Supreme Court of the United States

87

No. 46—Original
IN EQUITY

COMMONWEALTH OF KENTUCKY, - - Complainant,

v.

THE STATE OF INDIANA, AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, LESTER R. McCOOL, ALL CITIZENS OF THE STATE OF INDIANA, - - - - - Defendants.

REPORT No. 12
BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY, 19, 1930

STATE OF INDIANA,
PHILIP LUTZ, JR.,
Attorney General of Indiana,
URBAN C. STOVER,
JOSEPH P. McNAMARA,
Deputy Attorneys General of Indiana,
Solicitors for the State of Indiana.

IN THE

Supreme Court of the United States

No. 16—Original
IN EQUITY

COMMONWEALTH OF KENTUCKY, - - Complainant,

v.

THE STATE OF INDIANA, AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, LESTER R. McCOOL, ALL CITIZENS OF THE STATE OF INDIANA, - - - - - Defendants.

REPORT No. 12
BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY, 19, 1930

To the Honorable Charles Elmore Cropley, Clerk of the Supreme Court of the United States:

Upon the entry of the decree of the Supreme Court of May 19, 1930, the State of Indiana, through and by its State Highway Commission, proceeded at once with the work of completing plans and specifications for said

bridge and with the award of contracts and the work of construction as set out below.

For the preparation of plans and specifications and work of construction, the project has been divided into eleven contracts and the work done from May 19, 1930, to March 1, 1936, so divided in this report.

CONTRACT No. 1, which includes the five main river piers, designated as Piers A to E, inclusive.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, the Kansas City Bridge Company, Kansas City, Mo., at a contract price of $466,800.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made avail-

able for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Kansas City Bridge Company.

(d) Pursuant to its construction contract, the Kansas City Bridge Company has proceeded with and has completed the construction of five main piers, and has received full and final payment therefor.

CONTRACT No. 2, which includes the long span steel cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction contract to the low

bidder, the American Bridge Company, Pittsburgh, Pa., at a contract price of $675,945.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid American Bridge Company.

(d) Pursuant to its construction contract, the American Bridge Company has proceeded with and has completed the construction of the long span cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E and has received full and final payment therefor.

CONTRACT No. 3, which includes the remaining piers and abutments of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said con-

tract of date September 12, 1928, the Indiana State highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, Rieth-Riley Construction Company, Goshen, Indiana, at a contract price of $197,500.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Rieth-Riley Construction Company.

(d) Pursuant to its construction contract the Rieth-Riley Construction Company has proceeded with and has completed the construction of the approach piers and abutments and has received full and final payment therefor.

CONTRACT No. 4, which includes the remainder of the steel superstructure of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that

the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on December 4, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $260,750.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 18, 1930, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the Globe Construction Company has proceeded with and has completed the construction of the approach superstructure (including concrete floor) and has received full and final payment therefor.

CONTRACT No. 5, which includes the earthwork and small structures for the earth and embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on March 31, 1931, competitive bids for the construction of this work were

received by the Indiana State Highway Commission.

(b) On April 23, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana), awarded a construction contract to the low bidder, the Scharl Construction Company, Grand Rapids, Michigan, at a contract price of $188,221.47.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way, the Director of the Indiana State Highway Commission as of June 19, 1931, executed a construction contract with the aforesaid Scharl Construction Company.

(d) Pursuant to its construction contract, the said Scharl Construction Company has proceeded with the construction of the earth embankment approaches, and has completed this work and has received full and final payment therefor.

CONTRACT No. 6, which includes two larger bridges providing openings for flood waters in sloughs across the embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $97,044.40.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way, the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract, the said Globe Construction Company has proceeded with and has completed the construction of these overflow bridges and has received full and final payment therefor.

CONTRACT No. 7, which includes one large bridge providing an opening for floodwaters in sloughs across the north embankment approach and one small bridge over a stream crossing the north embankment approach.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in Indiana), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $134,865.66.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way, the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract, the said Globe Construction Company has proceeded with and has completed the construction of these structures and has received full and final payment therefor.

CONTRACT No. 8, which includes the pavement, shoulders, guard rail and incidental items, on the earth embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on April 5, 1932, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 14, 1932, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission, awarded a construc-

tion contract to the low bidder, Wm. D. Vogel, Indianapolis, Indiana, at a contract price of $58,739.71.

(c) Having been informed of the approval of the Kentucky State Highway Commission on said award, the Director of the Indiana State Highway Commission as of May 4, 1932, executed a construction contract with the aforesaid Wm. D. Vogel.

(d) Pursuant to his construction contract, the said Wm. D. Vogel has proceeded with and has completed the pavement, shoulders, guard rail, and appurtenances thereto (except for certain short gaps in the pavement adjacent to overflow bridges, which amounts of pavement were removed from this contract because settlement of the fill was expected), and has received full and final payment therefor.

CONTRACT No. 9, which includes the remaining gaps in the pavement, the construction of slope revetments to protect the embankment approaches from erosion, and incidental items.

(a) Contract plans, specifications and contract papers have been completed and on February 21, 1933, competitive bids for the construction of this work were received by the State Highway Commission of Indiana.

(b) On February 23, 1933, the State Highway Commission of Indiana, subject to the approval of the

Kentucky Highway Commission, awarded a construction contract to the low bidder, Hanson Bros., Inc., Evansville, Indiana, at a contract price of $41,290.64.

(c) Having been informed of the approval of the Kentucky State Highway Commission on said award, the Chairman of the State Highway Commission of Indiana, on May 4, 1933, executed a construction contract with the aforesaid Hanson Bros., Inc.

(d) Pursuant to its construction contract, the said Hanson Bros. have proceeded with and have completed the work contained in this contract and have received full and final payment therefor.

CONTRACT No. 10, which includes bituminous paving of shoulders, placing of riprap, placing of topsoil and seeding of shoulders and slopes.

(a) Contract plans, specifications and contract papers have been completed and on October 10, 1933, competitive bids for this work were received by the State Highway Commission of Indiana.

(b) On October 13, 1933, the State Highway Commission of Indiana, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Wm. D. Vogel, Indianapolis, Indiana, at a contract price of $19,900.41.

(c) Having been informed of the approval of the Kentucky Highway Commission on said award, the

Chairman of the State Highway Commission of Indiana as of November 1, 1933, executed a construction contract with the aforesaid Wm. D. Vogel.

(d) Pursuant to his construction contract, the said Wm. D. Vogel has proceeded with and has completed the work provided in this contract and has received full and final payment therefor.

CONTRACT No. 11, which includes electric navigation lighting system to replace the oil navigation lighting system.

(a) Contract plans, specifications and contract papers have been completed and on December 20, 1935, competitive bids for this work were received by the State Highway Commission of Indiana.

(b) On December 31, 1935, the State Highway Commission of Indiana, subject to the approval of the Kentucky Highway Commission, made a tentative award of the contract to the low bidder, the Swanson-Nunn Electric Company, Evansville, Indiana, at a contract price of $4,569.00.

(c) Having been informed of the approval of the Kentucky Highway Commission on said award, the Chairman of the State Highway Commission of Indiana, on February 24, 1936, executed a construction contract with the aforesaid Swanson-Nunn Electric Company.

(d) Notice has been sent to the said Swanson-Nunn Electric Company of the execution of the construction contract with instructions to proceed with the work contained in this contract.

GENERAL—The Kentucky State Highway Commission states that all rights of way required for this project in Kentucky have been acquired by agreement or condemnation. All rights of way required for this project in Indiana have been acquired by agreement or condemnation.

The bridge and approaches are open to and being used by traffic.

Under the terms of an act of the General Assembly of Indiana, entitled "An Act creating a state highway commission, providing for the appointment of members of the state highway commission, prescribing the powers and duties of the members of the commission, for the establishment of a system of state highways, for the construction, maintenance, repair and control of state highways, for the creation of a state highway fund, providing for cooperation with the federal government in the construction of rural post roads, repealing an act entitled 'An Act creating a state highway commission providing for the appointment of the members of the state highway commission, for the appointment of a director and of employees of the state highway commission, providing for the division of the work of the commission, for the establishment of a system of state highways, for the construction, maintenance, repair and control of public highways,

for the creation of a state highway fund, providing for the violation of the provisions of said act, providing for cooperation with the federal government in the construction of rural post roads, repealing an act entitled "An Act creating a state highway commission providing for the construction, reconstruction, maintenance, repair and control of public highways, and providing for cooperation with the federal government in the construction of rural post roads," (approved March 7, 1917), and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency,' approved March 10, 1919, and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency," approved February 14, 1933, the act of March 10, 1919, establishing the Indiana State Highway Commission was repealed and all of the offices created by that act were revoked, abolished and declared vacant. Pursuant to said act of February 14, 1933, the Governor of Indiana appointed a new State Highway Commission, consisting of James D. Adams, chairman, and Evan B. Stotsenburg and John Ward Wheeler, members, such appointments being effective as of February 15, 1933.

Said act of February 14, 1933, provides that "All properties, and contractual and equitable rights and obligations, and any and all negotiations in the process of consummation of the state highway commission as created by said act of March 10, 1919, and all acts amendatory thereof and supplemental thereto, are hereby transferred to the state highway commission as herein created," and, that "Under the authority of the state highway commission and in conformity to its orders, the chairman shall ap-

prove all bids, sign all vouchers, issue all orders for supplies and materials, sign all contracts and agreements in the name of the State of Indiana, and shall subscribe to all other matters which may arise in the carrying out of the intent and purpose of this act."

Dated at Indianapolis, Indiana, February 27, 1936.

Respectfully submitted,

JAMES D. ADAMS, Chairman,
State Highway Commission of Indiana.

The above and foregoing report, made by the State Highway Commission of Indiana, through its said Chairman, for and on behalf of the defendant, State of Indiana, in accordance with clause 5 of the decree of May 19, 1930, of the Supreme Court of the United States in said cause is

Respectfully submitted,

PHILIP LUTZ, JR.,
Attorney General of Indiana,

URBAN C. STOVER,
JOSEPH P. McNAMARA,
Deputy Attorneys General of Indiana,

Solicitors for the State of Indiana.

FILE COPY

IN THE

Supreme Court of the United States

~~8~~ 7

No. ~~16~~—Original
IN EQUITY

COMMONWEALTH OF KENTUCKY - - Complainant,

v.

THE STATE OF INDIANA, AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, LESTER R. McCOOL, ALL CITIZENS OF THE STATE OF INDIANA, - - - - - Defendants.

REPORT No. 13
BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY, 19, 1930

STATE OF INDIANA,
PHILIP LUTZ, JR.,
Attorney General of Indiana,
URBAN C. STOVER,
JOSEPH P. McNAMARA,
Deputy Attorneys General of Indiana,
Solicitors for the State of Indiana.

IN THE

Supreme Court of the United States

No. 16—Original
IN EQUITY

COMMONWEALTH OF KENTUCKY - - Complainant,

v.

THE STATE OF INDIANA, AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, LESTER R. McCOOL, ALL CITIZENS OF THE STATE OF INDIANA, - - - - - Defendants.

REPORT No. 13
BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY, 19, 1930

To the Honorable Charles Elmore Cropley, Clerk of the Supreme Court of the United States:

Upon the entry of the decree of the Supreme Court of May 19, 1930, the State of Indiana, through and by its State Highway Commission, proceeded at once with the work of completing plans and specifications for said

bridge and with the award of contracts and the work of construction as set out below.

For the preparation of plans and specifications and work of construction, the project has been divided into eleven contracts and the work done from May 19, 1930, to September 1, 1936, so divided in this report.

CONTRACT No. 1, which includes the five main river piers, designated as Piers A to E, inclusive.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, the Kansas City Bridge Company, Kansas City, Mo., at a contract price of $466,800.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made avail-

able for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Kansas City Bridge Company.

(d) Pursuant to its construction contract, the Kansas City Bridge Company has proceeded with and has completed the construction of five main piers, and has received full and final payment therefor.

CONTRACT No. 2, which includes the long span steel cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction contract to the low

bidder, the American Bridge Company, Pittsburgh, Pa., at a contract price of $675,945.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid American Bridge Company.

(d) Pursuant to its construction contract, the American Bridge Company has proceeded with and has completed the construction of the long span cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E and has received full and final payment therefor.

CONTRACT No. 3, which includes the remaining piers and abutments of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said con-

tract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, Rieth-Riley Construction Company, Goshen, Indiana, at a contract price of $197,500.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Rieth-Riley Construction Company.

(d) Pursuant to its construction contract the Rieth-Riley Construction Company has proceeded with and has completed the construction of the approach piers and abutments and has received full and final payment therefor.

CONTRACT No. 4, which includes the remainder of the steel superstructure of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that

the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on December 4, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $260,750.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 18, 1930, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the Globe Construction Company has proceeded with and has completed the construction of the approach superstructure (including concrete floor) and has received full and final payment therefor.

CONTRACT No. 5, which includes the earthwork and small structures for the earth and embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on March 31, 1931, competitive bids for the construction of this work were

received by the Indiana State Highway Commission.

(b) On April 23, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana), awarded a construction contract to the low bidder, the Scharl Construction Company, Grand Rapids, Michigan, at a contract price of $188,221.47.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way, the Director of the Indiana State Highway Commission as of June 19, 1931, executed a construction contract with the aforesaid Scharl Construction Company.

(d) Pursuant to its construction contract, the said Scharl Construction Company has proceeded with the construction of the earth embankment approaches, and has completed this work and has received full and final payment therefor.

CONTRACT No. 6, which includes two larger bridges providing openings for floodwaters in sloughs across the embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $97,044.40.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way, the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract, the said Globe Construction Company has proceeded with and has completed the construction of these overflow bridges and has received full and final payment therefor.

CONTRACT No. 7, which includes one large bridge providing an opening for floodwaters in sloughs across the north embankment approach and one small bridge over a stream crossing the north embankment approach.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in Indiana), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $134,865.66.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way, the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract, the said Globe Construction Company has proceeded with and has completed the construction of these structures and has received full and final payment therefor.

CONTRACT No. 8, which includes the pavement, shoulders, guard rail and incidental items, on the earth embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on April 5, 1932, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 14, 1932, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission, awarded a construc-

tion contract to the low bidder, Wm. D. Vogel, Indianapolis, Indiana, at a contract price of $58,739.71.

(c) Having been informed of the approval of the Kentucky State Highway Commission on said award, the Director of the Indiana State Highway Commission as of May 4, 1932, executed a construction contract with the aforesaid Wm. D. Vogel.

(d) Pursuant to his construction contract, the said Wm. D. Vogel has proceeded with and has completed the pavement, shoulders, guard rail, and appurtenances thereto (except for certain short gaps in the pavement adjacent to overflow bridges, which amounts of pavement were removed from this contract because settlement of the fill was expected), and has received full and final payment therefor.

CONTRACT No. 9, which includes the remaining gaps in the pavement, the construction of slope revetments to protect the embankment approaches from erosion, and incidental items.

(a) Contract plans, specifications and contract papers have been completed and on February 21, 1933, competitive bids for the construction of this work were received by the State Highway Commission of Indiana.

(b) On February 23, 1933, the State Highway Commission of Indiana, subject to the approval of the

Kentucky Highway Commission, awarded a construction contract to the low bidder, Hanson Bros., Inc., Evansville, Indiana, at a contract price of $41,290.64.

(c) Having been informed of the approval of the Kentucky State Highway Commission on said award, the Chairman of the State Highway Commission of Indiana, on May 4, 1933, executed a construction contract with the aforesaid Hanson Bros., Inc.

(d) Pursuant to its construction contract, the said Hanson Bros. have proceeded with and have completed the work contained in this contract and have received full and final payment therefor.

CONTRACT No. 10, which includes bituminous paving of shoulders, placing of riprap, placing of topsoil and seeding of shoulders and slopes.

(a) Contract plans, specifications and contract papers have been completed and on October 10, 1933, competitive bids for this work were received by the State Highway Commission of Indiana.

(b) On October 13, 1933, the State Highway Commission of Indiana, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Wm. D. Vogel, Indianapolis, Indiana, at a contract price of $19,900.41.

(c) Having been informed of the approval of the Kentucky Highway Commission on said award, the

Chairman of the State Highway Commission of Indiana as of November 1, 1933, executed a construction contract with the aforesaid Wm. D. Vogel.

(d) Pursuant to his construction contract, the said Wm. D. Vogel has proceeded with and has completed the work provided in this contract and has received full and final payment therefor.

CONTRACT No. 11, which includes electric navigation lighting system to replace the oil navigation lighting system.

(a) Contract plans, specifications and contract papers have been completed and on December 20, 1935, competitive bids for this work were received by the State Highway Commission of Indiana.

(b) On December 31, 1935, the State Highway Commission of Indiana, subject to the approval of the Kentucky Highway Commission, made a tentative award of the contract to the low bidder, the Swanson-Nunn Electric Company, Evansville, Indiana, at a contract price of $4,569.00.

(c) Having been informed of the approval of the Kentucky Highway Commission on said award, the Chairman of the State Highway Commission of Indiana, on February 24, 1936, executed a construction contract with the aforesaid Swanson-Nunn Electric Company.

(d) Pursuant to its construction contract, the said Swanson-Nunn Electric Company has proceeded with and has completed the work provided in this contract and has received full and final payment therefor.

GENERAL—The Kentucky State Highway Commission states that all rights of way required for this project in Kentucky have been acquired by agreement or condemnation. All rights of way required for this project in Indiana have been acquired by agreement or condemnation.

The bridge and approaches are open to and being used by traffic.

Under the terms of an act of the General Assembly of Indiana, entitled "An Act creating a state highway commission, providing for the appointment of members of the state highway commission, prescribing the powers and duties of the members of the commission, for the establishment of a system of state highways, for the construction, maintenance, repair and control of state highways, for the creation of a state highway fund, providing for cooperation with the federal government in the construction of rural post roads, repealing an act entitled 'An Act creating a state highway commission providing for the appointment of the members of the state highway commission, for the appointment of a director and of employees of the state highway commission, providing for the division of the work of the commission, for the establishment of a system of state highways, for the construction, maintenance, repair and control of public highways,

for the creation of a state highway fund, providing for the violation of the provisions of said act, providing for cooperation with the federal government in the construction of rural post roads, repealing an act entitled "An Act creating a state highway commission providing for the construction, reconstruction, maintenance, repair and control of public highways, and providing for cooperation with the federal government in the construction of rural post roads," (approved March 7, 1917), and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency,' approved March 10, 1919, and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency," approved February 14, 1933, the act of March 10, 1919, establishing the Indiana State Highway Commission was repealed and all of the offices created by that act were revoked, abolished and declared vacant. Pursuant to said act of February 14, 1933, the Governor of Indiana appointed a new State Highway Commission, consisting of James D. Adams, chairman, and Evan B. Stotsenburg and John Ward Wheeler, members, such appointments being effective as of February 15, 1933.

Said act of February 14, 1933, provides that "All properties, and contractual and equitable rights and obligations, and any and all negotiations in the process of consummation of the state highway commission as created by said act of March 10, 1919, and all acts amendatory thereof and supplemental thereto, are hereby transferred to the state highway commission as herein created," and, that "Under the authority of the state highway commission and in conformity to its orders, the chairman shall ap-

prove all bids, sign all vouchers, issue all orders for supplies and materials, sign all contracts and agreements in the name of the State of Indiana, and shall subscribe to all other matters which may arise in the carrying out of the intent and purpose of this act."

Dated at Indianapolis, Indiana, August 29, 1936.

Respectfully submitted,

JAMES D. ADAMS, Chairman,
State Highway Commission of Indiana.

The above and foregoing report, made by the State Highway Commission of Indiana, through its said Chairman, for and on behalf of the defendant, State of Indiana, in accordance with clause 5 of the decree of May 19, 1930, of the Supreme Court of the United States in said cause is

Respectfully submitted,

PHILIP LUTZ, JR.,
Attorney General of Indiana,

URBAN C. STOVER,
JOSEPH P. McNAMARA,
Deputy Attorneys General of Indiana,

Solicitors for the State of Indiana.

FILE COPY

Supreme Court, U.S.
FILED
MAR 15 1937
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

7

No. 16—Original

IN EQUITY

COMMONWEALTH OF KENTUCKY - - - - Complainant,

v.

THE STATE OF INDIANA, AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, LESTER R. McCOOL, ALL CITIZENS OF THE STATE OF INDIANA, - - - - - - Defendants.

REPORT No. 14

BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930

STATE OF INDIANA,
OMER S. JACKSON,
Attorney General of Indiana,
URBAN C. STOVER,
JOSEPH P. McNAMARA,
Deputy Attorneys General of Indiana,
Solicitors for the State of Indiana.

IN THE

SUPREME COURT OF THE UNITED STATES

No. 16—Original

IN EQUITY

COMMONWEALTH OF KENTUCKY - - - - Complainant,

v.

THE STATE OF INDIANA, AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, LESTER R. McCOOL, ALL CITIZENS OF THE STATE OF INDIANA, - - - - - - Defendants.

REPORT No. 14

BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930

To the Honorable Charles Elmore Cropley, Clerk of the Supreme Court of the United States:

Upon the entry of the decree of the Supreme Court of May 19, 1930, the State of Indiana, through and by its State Highway Commission, proceeded at once with the work of completing plans and specifi-

cations for said bridge and with the award of contracts and the work of construction as set out below.

For the preparation of plans and specifications and work of construction, the project has been divided into eleven contracts and the work done from May 19, 1930, to March 1, 1937, so divided in this report.

CONTRACT No. 1, which includes the five main river piers, designated as Piers A to E, inclusive.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, the Kansas City Bridge Company, Kansas City, Mo., at a contract price of $466,800.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had

made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Kansas City Bridge Company.

CONTRACT No. 2, which includes the long span steel cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E.

(a) Contract plant, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction contract to the low bidder, the American Bridge Company, Pittsburgh, Pa., at a contract price of $675,945.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid American Bridge Company.

(d) Pursuant to its construction contract, the American Bridge Company has proceeded with and has completed the construction of the long span cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E and has received full and final payment therefor.

CONTRACT No. 3, which includes the remaining piers and abutments of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain condi-

tions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, Rieth-Riley Construction Company, Goshen, Indiana, at a contract price of $197,500.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Rieth-Riley Construction Company.

(d) Pursuant to its construction contract the Rieth-Riley Construction Company has proceeded with and has completed the construction of the approach piers and abutments and has received full and final payment therefor.

CONTRACT No. 4, which includes the remainder of the steel superstructure of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Ken-

tucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on December 4, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $260,750.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 18, 1930, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the Globe Construction Company has proceeded with and has completed the construction of the approach superstructure (including concrete floor) and has received full and final payment therefor.

CONTRACT No. 5, which includes the earthwork and small structures for the earth and embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on March 31,

1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 23, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana), awarded a construction contract to the low bidder, the Scharl Construction Company, Grand Rapids, Michigan, at a contract price of $188,221.47.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way, the Director of the Indiana State Highway Commission as of June 19, 1931, executed a construction contract with the aforesaid Scharl Construction Company.

(d) Pursuant to its construction contract, the said Scharl Construction Company has proceeded with the construction of the earth embankment approaches, and has completed this work and has received full and final payment therefor.

CONTRACT No. 6, which includes two larger bridges providing openings for floodwaters in sloughs across the embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction

of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $97,044.40.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way, the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract, the said Globe Construction Company has proceeded with and has completed the construction of these overflow bridges and has received full and final payment therefor.

CONTRACT No. 7, which includes one large bridge providing an opening for floodwaters in sloughs across the north embankment approach and one small bridge over a stream crossing the north embankment approach.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction

of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in Indiana), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $134,865.66.

(c) Pursuant to its construction contract, the said Globe Construction Company has proceeded with and has completed the construction of these structures and has received full and final payment therefor.

CONTRACT No. 8, which includes the pavement, shoulders, guard rail and incidental items, on the earth embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on April 5, 1932, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 14, 1932, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Wm. D. Vogel, Indianapolis, Indiana, at a contract price of $58,739.71.

(c) Having been informed of the approval of the Kentucky State Highway Commission on said award, the Director of the Indiana State Highway Commission as of May 4, 1932, executed a construction contract with the aforesaid Wm. D. Vogel.

(d) Pursuant to his construction contract, the said Wm. D. Vogel has proceeded with and has completed the pavement, shoulders, guard rail and appurtenances thereto (except for certain short gaps in the pavement adjacent to overflow bridges, which amounts of pavement were removed from this contract because settlement of the fill was expected), and has received full and final payment therefor.

CONTRACT No. 9, which includes the remaining gaps in the pavement, the construction of slope revetments to protect the embankment approaches from erosion, and incidental items.

(a) Contract plans, specifications and contract papers have been completed and on February 21, 1933, competitive bids for the construction of this work were received by the State Highway Commission of Indiana.

(b) On February 23, 1933, the State Highway Commission of Indiana, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Hanson Bros., Inc., Evansville, Indiana, at a contract price of $41,290.64.

(c) Having been informed of the approval of the Kentucky State Highway Commission on said award, the Chairman of the State Highway Commission of Indiana, on May 4, 1933, executed a construction contract with the aforesaid Hanson Bros., Inc.

(d) Pursuant to its construction contract, the said Hanson Bros. have proceeded with and have completed the work contained in this contract and have received full and final payment therefor.

CONTRACT No. 10, which includes bituminous paving of shoulders, placing of riprap, placing of topsoil and seeding of shoulders and slopes.

(a) Contract plans, specifications and contract papers have been completed and on October 10, 1933, competitive bids for this work were received by the State Highway Commission of Indiana.

(b) On October 13, 1933, the State Highway Commission of Indiana, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Wm. D. Vogel, Indianapolis, Indiana, at a contract price of $19,900.41.

(c) Having been informed of the approval of the Kentucky Highway Commission on said award, the Chairman of the State Highway Commission of Indiana as of November 1, 1933, executed a construction contract with the aforesaid Wm. D. Vogel.

(d) Pursuant to his construction contract, the said Wm. D. Vogel has proceeded with and has completed the work provided in this contract and has received full and final payment therefor.

CONTRACT No. 11, which includes electric navigation lighting system to replace the oil navigation lighting system.

(a) Contract plans, specifications and contract papers have been completed and on December 20, 1935, competitive bids for this work were received by the State Highway Commission of Indiana.

(b) On December 31, 1935, the State Highway Commission of Indiana, subject to the approval of the Kentucky Highway Commission, made a tentative award of the contract to the low bidder, the Swanson-Nunn Electric Company, Evansville, Indiana, at a contract price of $4,569.00.

(c) Having been informed of the approval of the Kentucky Highway Commission on said award, the Chairman of the State Highway Commission of Indiana, on February 24, 1936, executed a construction contract with the aforesaid Swanson-Nunn Electric Company.

(d) Pursuant to its construction contract, the said Swanson-Nunn Electric Company has proceeded with and has completed the work

provided in this contract and has received full and final payment therefor.

GENERAL—The Kentucky State Highway Commission states that all rights of way required for this project in Kentucky have been acquired by agreement or condemnation. All rights of way required for this project in Indiana have been acquired by agreement or condemnation.

The bridge and approaches are open to and being used by traffic.

Under the terms of an act of the General Assembly of Indiana, entitled "An Act creating a state highway commission, providing for the appointment of members of the state highway commission, prescribing the powers and duties of the members of the commission, for the establishment of a system of state highways, for the construction, maintenance, repair and control of state highways, for the creation of a state highway fund, providing for cooperation with the federal government in the construction of rural post roads, repealing an act entitled 'An Act creating a state highway commission providing for the appointment of the members of the state highway commission, for the appointment of a director and of employes of the state highway commission, providing for the division of the work of the commission, for the establishment of a system of state highways, for the construction, maintenance, repair and control of public highways, for the creation of a state highway fund, providing for the violation of the provisions of said act, pro-

viding for cooperation with the federal government in the construction of rural post roads, repealing an act entitled "An Act creating a state highway commission providing for the construction, reconstruction, maintenance, repair and control of public highways, and providing for cooperation with the federal government in the construction of rural post roads," (approved March 7, 1917), and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency,' approved March 10, 1919, and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency," approved February 14, 1933, the act of March 10, 1919, establishing the Indiana State Highway Commission was repealed and all of the offices created by that act were revoked, abolished and declared vacant. Pursuant to said act of February 14, 1933, the Governor of Indiana appointed a new State Highway Commission, consisting of James D. Adams, chairman, and Evan B. Stotsenburg and John Ward Wheeler, members, such appointments being effective as of February 15, 1933.

Said act of February 14, 1933, provides that "All properties, and contractual and equitable rights and obligations, and any and all negotiations in the process of consummation of the state highway commission as created by said act of March 10, 1919, and all acts amendatory thereof and supplemental thereto, are hereby transferred to the state highway commission as herein created," and, that "Under the authority of the state highway commission and in conformity to its orders, the chairman shall approve all bids, sign all vouchers, issue all orders for

supplies and materials, sign all contracts and agreements in the name of the State of Indiana, and shall subscribe to all other matters which may arise in the carrying out of the intent and purpose of this act."

The State of Indiana, by the State Highway Commission of Indiana, now reports that it has fully complied with the decree of the Supreme Court of May 19, 1930, in that it has completed the construction of said bridge and has performed each and all the covenants of its said contract of September 12, 1928, with the Commonwealth of Kentucky, except those covenants relating to conveyance of title and maintenance and operation of the bridge, which covenants are required to be performed after the Commonwealth of Kentucky shall have collected sufficient tolls to retire and shall have retired all bonds outstanding against the bridge.

Dated at Indianapolis, Indiana, February 26, 1937.

Respectfully submitted,

JAMES D. ADAMS, Chairman,

State Highway Commission of Indiana.

The above and foregoing report, made by the State Highway Commission of Indiana, through its said Chairman, for and on behalf of the defendant, State of Indiana, in accordance with clause 5 of the decree of May 19, 1930, of the Supreme Court of the United States in said cause is respectfully submitted.

The State of Indiana further shows that it has fully complied with the decree of the Supreme Court and it now asks to be relieved from making further reports as is required by clause 5 of said decree.

OMER S. JACKSON,
Attorney General of Indiana,

URBAN C. STOVER,

JOSEPH P. McNAMARA,
Deputy Attorneys General of Indiana,

Solicitors for the State of Indiana.

FILE COPY

FILED
OCT 11 1937
CHARLES ELMORE CROP
CLER

IN THE

SUPREME COURT OF THE UNITED STATES

No. ~~16~~ 7 Original

IN EQUITY

COMMONWEALTH OF KENTUCKY - - - - - - Complainant,

v.

THE STATE OF INDIANA, AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, LESTER R. McCOOL, ALL CITIZENS OF THE STATE OF INDIANA, - - - - - - - - - - - Defendants.

REPORT No. 15

BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930

STATE OF INDIANA,
OMER STOKES JACKSON,
Attorney General of Indiana,
URBAN C. STOVER,
JOSEPH P. McNAMARA,
Deputy Attorneys General of Indiana,
Solicitors for the State of Indiana.

IN THE

SUPREME COURT OF THE UNITED STATES

No. 16—Original

IN EQUITY

COMMONWEALTH OF KENTUCKY - - - - - - Complainant,

v.

THE STATE OF INDIANA, AND JAMES DUANE DUNCAN, CLAUDE F. JOHNSON, WALTER L. BRANDT, ROBERT N. LOSEY, FRANK D. HATFIELD, TODD STOOPS, JOHN F. CARSON, ROBERT E. ROGERS, LESTER R. McCOOL, ALL CITIZENS OF THE STATE OF INDIANA, - - - - - - - - - - - Defendants.

REPORT No. 15

BY THE DEFENDANT, STATE OF INDIANA, THROUGH THE STATE HIGHWAY COMMISSION, IN ACCORDANCE WITH CLAUSE 5 OF THE DECREE OF MAY 19, 1930

To the Honorable Charles Elmore Cropley, Clerk of the Supreme Court of the United States:

Upon the entry of the decree of the Supreme Court of May 19, 1930, the State of Indiana, through and by its State Highway Commission, proceeded at once with the work of completing plans and specifications for

said bridge and with the award of contracts and the work of construction as set out below.

For the preparation of plans and specifications and work of construction, the project has been divided into eleven contracts and the work done from May 19, 1930, to September 1, 1937, so divided in this report.

CONTRACT No. 1, which includes the five main river piers, designated as Piers A to E, inclusive.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, the Kansas City Bridge Company, Kansas City, Mo., at a contract price of $466,800.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of

December 13, 1930, executed a construction contract with the aforesaid Kansas City Bridge Company.

(d) Pursuant to its construction contract, the Kansas City Bridge Company has proceeded with and has completed the construction of five main piers, and has received full and final payment therefor.

CONTRACT No. 2, which includes the long span steel cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E.

(a) Contract plans, specifications and contract papers have been completed and on October 28, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky) awarded a construction contract to the low bidder, the American Bridge Company, Pittsburgh, Pa., at a contract price of $675,945.00.

(c) Having been advised on December 13, 1930,

that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid American Bridge Company.

(d) Pursuant to its construction contract, the American Bridge Company has proceeded with and has completed the construction of the long span cantilever superstructure (including concrete floor and navigation lights) of four spans from Pier A to Pier E and has received full and final payment therefor.

CONTRACT No. 3, which includes the remaining piers and abutments of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on November 14, 1930, subject to the fulfillment of certain conditions beyond its control (including the furnishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract

to the low bidder, Rieth-Riley Construction Company, Goshen, Indiana, at a contract price of $179,500.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 13, 1930, executed a construction contract with the aforesaid Rieth-Riley Construction Company.

(d) Pursuant to its construction contract the Rieth-Riley Construction Company has proceeded with and has completed the construction of the approach piers and abutments and has received full and final payment therefor.

CONTRACT No. 4, which includes the remainder of the steel superstructure of the bridge.

(a) Contract plans, specifications and contract papers have been completed and on October 30, 1930, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) Having been officially advised on November 10, 1930, by the Kentucky Highway Commission that the Commonwealth of Kentucky had made permanently available sufficient funds to pay its part of the cost of said bridge as provided in said contract of date September 12, 1928, the Indiana State Highway Commission, on December 4, 1930, subject to the fulfillment of certain conditions beyond its control (including the fur-

nishing by Kentucky of necessary right of way in Kentucky), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $260,750.00.

(c) Having been advised on December 13, 1930, that the Commonwealth of Kentucky had made available for occupancy and use the right of way necessary for this contract, the Director of the Indiana State Highway Commission as of December 18, 1930, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract the Globe Construction Company has proceeded with and has completed the construction of the approach superstructure (including concrete floor) and has received full and final payment therefor.

CONTRACT No. 5, which includes the earthwork and small structures for the earth and embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on March 31, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 23, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana), awarded a construction contract to the low bidder, the Scharl Construction Com-

pany, Grand Rapids, Michigan, at a contract price of $188,221.47.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way, the Director of the Indiana State Highway Commission as of June 19, 1931, executed a construction contract with the aforesaid Scharl Construction Company.

(d) Pursuant to its construction contract, the said Scharl Construction Company has proceeded with the construction of the earth embankment approaches, and has completed this work and has received full and final payment therefor.

CONTRACT No. 6, which includes two larger bridges providing openings for floodwaters in sloughs across the embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in both Kentucky and Indiana), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $97,044.40.

(c) Having received from this bidder a waiver of

claims for damages because of delay in securing rights of way, the Director of the Indiana State Highway Commission as of August 15, 1931, executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract, the said Globe Construction Company has proceeded with and has completed the construction of these overflow bridges and has received full and final payment therefor.

CONTRACT No. 7, which includes one large bridge providing an opening for floodwaters in sloughs across the north embankment approach and one small bridge over a stream crossing the north embankment approach.

(a) Contract plans, specifications and contract papers have been completed and on July 15, 1931, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On July 16, 1931, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission and certain conditions relative to rights of way (in Indiana), awarded a construction contract to the low bidder, the Globe Construction Company, Evansville, Indiana, at a contract price of $134,865.66.

(c) Having received from this bidder a waiver of claims for damages because of delay in securing rights of way, the Director of the Indiana State Highway Commission as of August 15, 1931,

executed a construction contract with the aforesaid Globe Construction Company.

(d) Pursuant to its construction contract, the said Globe Construction Company has proceeded with and has completed the construction of these structures and has received full and final payment therefor.

CONTRACT No. 8, which includes the pavement, shoulders, guard rail and incidental items, on the earth embankment approaches.

(a) Contract plans, specifications and contract papers have been completed and on April 5, 1932, competitive bids for the construction of this work were received by the Indiana State Highway Commission.

(b) On April 14, 1932, the Indiana State Highway Commission, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Wm. D. Vogel, Indianapolis, Indiana, at a contract price of $58,739.71.

(c) Having been informed of the approval of the Kentucky State Highway Commission on said award, the Director of the Indiana State Highway Commission as of May 4, 1932, executed a construction contract with the aforesaid Wm. D. Vogel.

(d) Pursuant to his construction contract, the said Wm. D. Vogel has proceeded with and has completed the pavement, shoulders, guard rail and appurtenances thereto (except for certain short

gaps in the pavement adjacent to overflow bridges, which amounts of pavement were removed from this contract because settlement of the fill was expected), and has received full and final payment therefor.

CONTRACT No. 9, which includes the remaining gaps in the pavement, the construction of slope revetments to protect the embankment approaches from erosion, and incidental items.

(a) Contract plans, specifications and contract papers have been completed and on February 21, 1933, competitive bids for the construction of this work were received by the State Highway Commission of Indiana.

(b) On February 23, 1933, the State Highway Commission of Indiana, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Hanson Bros., Inc., Evansville, Indiana, at a contract price of $41,290.64.

(c) Having been informed of the approval of the Kentucky State Highway Commission on said award, the Chairman of the State Highway Commission of Indiana, on May 4, 1933, executed a construction contract with the aforesaid Hanson Bros., Inc.

(d) Pursuant to its construction contract, the said Hanson Bros. have proceeded with and have completed the work contained in this contract and have received full and final payment therefor.

CONTRACT No. 10, which includes bituminous paving of shoulders, placing of riprap, placing of topsoil and seeding of shoulders and slopes.

(a) Contract plans, specifications and contract papers have been completed and on October 10, 1933, competitive bids for this work were received by the State Highway Commission of Indiana.

(b) On October 13, 1933, the State Highway Commission of Indiana, subject to the approval of the Kentucky Highway Commission, awarded a construction contract to the low bidder, Wm. D. Vogel, Indianapolis, Indiana, at a contract price of $19,900.41.

(c) Having been informed of the approval of the Kentucky Highway Commission on said award, the Chairman of the State Highway Commission of Indiana as of November 1, 1933, executed a construction contract with the aforesaid Wm. D. Vogel.

(d) Pursuant to his construction contract, the said Wm. D. Vogel has proceeded with and has completed the work provided in this contract and has received full and final payment therefor.

CONTRACT No. 11, which includes electric navigation lighting system to replace the oil navigation lighting system.

(a) Contract plans, specifications and contract papers have been completed and on December 20, 1935, competitive bids for this work were received by the State Highway Commission of Indiana.

(b) On December 31, 1935, the State Highway Commission of Indiana, subject to the approval of the Kentucky Highway Commission, made a tentative award of the contract to the low bidder, the Swanson-Nunn Electric Company, Evansville, Indiana, at a contract price of $4,569.00.

(c) Having been informed of the approval of the Kentucky Highway Commission on said award, the Chairman of the State Highway Commission of Indiana, on February 24, 1936, executed a construction contract with the aforesaid Swanson-Nunn Electric Company.

(d) Pursuant to its construction contract, the said Swanson-Nunn Electric Company has proceeded with and has completed the work provided in this contract and has received full and final payment therefor.

GENERAL—The Kentucky State Highway Commission states that all rights of way required for this project in Kentucky have been acquired by agreement or condemnation. All rights of way required for this project in Indiana have been acquired by agreement or condemnation.

The bridge and approaches are open to and being used by traffic.

Under the terms of an act of the General Assembly of Indiana, entitled "An Act creating a state highway commission, providing for the appointment of members of the state highway commission, prescribing the powers and duties of the members of the commission, for the establishment of a system of state highways,

for the construction, maintenance, repair and control of state highways, for the creation of a state highway fund, providing for cooperation with the federal government in the construction of rural post roads, repealing an act entitled 'An Act creating a state highway commission providing for the appointment of the members of the state highway commission, for the appointment of a director and of employes of the state highway commission, providing for the division of the work of the commission, for the establishment of a system of state highways, for the construction, maintenance, repair and control of public highways, for the creation of a state highway fund, providing for the violation of the provisions of said act, providing for cooperation with the federal government in the construction of rural post roads, repealing an act entitled "An Act creating a state highway commission providing for the construction, reconstruction, maintenance, repair and control of public highways, and providing for cooperation with the federal government in the construction of rural post roads," (approved March 7, 1917), and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency,' approved March 10, 1919, and repealing all other laws and parts of laws in conflict therewith, and declaring an emergency," approved February 14, 1933, the act of March 10, 1919, establishing the Indiana State Highway Commission was repealed and all of the offices created by that act were revoked, abolished and declared vacant. Pursuant to said act of February 14, 1933, the Governor of Indiana appointed a new State Highway Commission, consisting of James D. Adams, chairman, and Evan B. Stotsenburg and John Ward Wheeler, members, such appointments being effective as of February 15, 1933.

Said act of February 14, 1933, provides that "All properties, and contractual and equitable rights and obligations, and any and all negotiations in the process of consummation of the state highway commission as created by said act of March 10, 1919, and all acts amendatory thereof and supplemental thereto, are hereby transferred to the state highway commission as herein created," and, that "Under the authority of the state highway commission and in conformity to its orders, the chairman shall approve all bids, sign all vouchers, issue all orders for supplies and materials, sign all contracts and agreements in the name of the State of Indiana, and shall subscribe to all other matters which may arise in the carrying out of the intent and purpose of this act."

The State of Indiana, by the State Highway Commission of Indiana, now reports that it has fully complied with the decree of the Supreme Court of May 19, 1930, in that it has completed the construction of said bridge and has performed each and all the covenants of its said contract of September 12, 1928, with the Commonwealth of Kentucky, except those covenants relating to conveyance of title and maintenance and operation of the bridge, which covenants are required to be performed after the Commonwealth of Kentucky shall have collected sufficient tolls to retire and shall have retired all bonds outstanding against the bridge.

Dated at Indianapolis, Indiana, August 28, 1937.

Respectfully submitted,

EARL CRAWFORD, Chairman,

State Highway Commission of Indiana.

The above and foregoing report, made by the State Highway Commission of Indiana, through its said Chairman, for and on behalf of the defendant, State of Indiana, in accordance with clause 5 of the decree of May 19, 1930, of the Supreme Court of the United States in said cause is respectfully submitted.

The State of Indiana further shows that it has fully complied with the decree of the Supreme Court and it now asks to be relieved from making further reports as is required by clause 5 of said decree.

OMER STOKES JACKSON,
Attorney General of Indiana,
URBAN C. STOVER,
JOSEPH P. McNAMARA,
Deputy Attorneys General of Indiana,
Solicitors for the State of Indiana.